TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1903~~ 1904.

No. ~~239~~ 79.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THE BROOKLYN CITY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE BOARD OF TAX COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JULY 7, 1903.

(19,000.)

(19,000.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 349.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THE BROOKLYN CITY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE BOARD OF TAX COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 28th day of April, in the year of our Lord one thousand nine hundred and three, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur—April 29th,—1903.

b THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE Brooklyn City Railroad Company, Respondent,
ag'st
GEORGE E. PRIEST & O'rs, Tax Commissioners, Composing the State Board of Tax Commissioners, Appellants.

Be it remembered, that on the 25th day of February, in the year of our Lord one thousand nine hundred and three, George E. Priest & o'rs, tax commissioners, &c., the appellants in this proceeding came here into the court of appeals, by John Cunneen, attorney general, their attorney, and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the third judicial department. And The Brooklyn City Railroad Company, relator, the respondent in said proceeding, afterwards appeared in said court of appeals by Sheehan and Collin, its attorneys.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

c Whereupon, the said court of appeals having heard this proceeding argued by Mr. John Cunneen, attorney general and Mr. Wm. H. Wood, of counsel for the appellants, and by Mr. Charles A. Collin and Mr. David B. Hill, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is reversed, and that of special term affirmed, with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court there to be proceeded upon according to law.

d Therefore, it is considered that the said order be, and the same hereby is, reversed, &c., &c., as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices

thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *April 29th*, 1903.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk.*

e Original. Filed Feb. 25, 1903.

In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* BROOKLYN City Railroad Company, Respondent,
against
STATE BOARD OF TAX COMMISSIONERS, Appellants.

Papers on Appeal.

John Cunneen, attorney-general, attorney for appellants, capitol, Albany, N. Y.

Sheehan & Collin, attorneys for relator-respondent, 32 Nassau street, borough of Manhattan, New York city.

13–361.

Filed Feb. 25, 1903.

Filed Albany county, N. Y. Clerk's office May 1 11.23 a. m. 1903.

f In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* BROOKLYN City Railroad Company, Respondents,
against
STATE BOARD OF TAX COMMISSIONERS, Appellants.

Statement.

Appeal from an order of the appellate division of the supreme court, third department, granted on January 6, 1903, and entered in the Albany county clerk's office on January 30, 1903, except from that part of said order which affirms the order of the special term therein upon the facts. The order appealed from affirms on the facts

and reverses on the law an order of the special term made by Mr. Justice Herrick, and entered on July 15, 1902, confirming the report of the referee, Hon. Robert Earl, now deceased, and declares the assessment in question to be illegal and void, and directs it to be stricken from the assessment roll.

The report of the referee directed that the assessment of the special franchise of the relator be reduced to $5,097,483.28, and, as so reduced, be confirmed.

The order of reference directed the referee to take and report to the court such evidence, upon the several issues of fact raised by the pleadings, as might be adduced before him, with his findings of fact and conclusions of law.

The names of the original parties hereto are as above, and no change in them or their attorneys has taken place.

1 To the supreme court of the State of New York:

The petition of your petitioner, The Brooklyn City Railroad Company, respectfully shows:

That your petitioner is and for several years last past has been a domestic corporation, duly incorporated under the laws of the State of New York, and the owner of a street surface railroad constructed, maintained and operated in, upon and through certain streets, highways and public places in the borough of Brooklyn and in the borough of Queens, in the city of New York, together with the franchise, rights and permissions to construct, maintain and operate the same, which franchise, rights and permissions, together with the tangible property so constructed, maintained and operated, situated in, upon, under or above such streets, highways and public places, is known and denominated in the tax law of this State as a special franchise.

That since the first day of January, 1900, George E. Priest, J. Edgar Leaycraft and Lester F. Stearns have been and still are the tax commissioners of the State of New York, constituting the State Board of Tax Commissioners of said State.

Your petitioner further shows, on information and belief, that, pursuant to section 43 of the tax law of this State and within thirty days after the said section took effect, it made a written report to said State Board of Tax Commissioners as to all matters required by said section to be reported to said board, and has in the manner

2 required by law, made all reports and supplemental reports required by law or by said board to be made to it, together with statutes, consents and resolutions of local authorities relating to said special franchise and to the payment of percentages of gross receipts and license fees and other charges, burdens and impositions which were made conditions to the acceptance or enjoyment of said special franchise, and which were agreed to by your petitioner and have always been fully performed.

That heretofore and during the year 1900, the said Board of Tax Commissioners, at its office in the city of Albany, undertook and

assumed to fix and determine the valuation of the special franchise of your petitioner for the year 1900 in the borough of Brooklyn, and in the borough of Queens, in the city of New York, and thereafter served upon your petitioner a notice in writing of such assumed valuation and assessment of said special franchise, and that said board would receive, hear and determine any complaint by your petitioner concerning the same on the day and hour therein specified, at the office of said board, in the city of Albany.

That on said day, at the time and place so specified by said board to hear and determine any complaint by your petitioner, as aforesaid, and on the days thereafter to which such hearing was from time to time duly adjourned by said board, your petitioner duly appeared before said board and filed with said board statements and complaints under oath, specifying the respects in which the said assessment and valuation complained of was incorrect, as hereinafter more fully set forth.

That said special franchise so assumed to be assessed by said State board consisted of tangible property located in the streets, and of intangible property consisting of the right, privilege or franchise to construct, maintain and operate such tangible property in the streets, as aforesaid, and that your petitioner prior to and at the time of said hearing and thereafter requested and demanded of said State board that it should inform your petitioner of the
3 amounts of the valuations so made by said board, respectively, of such tangible and intangible property included in such special franchise, and of the method, principle or theory by which it valued the intangible property and the tangible property, respectively, included in such special franchise, but said State board refused to inform your petitioner prior to or at, or since, said hearing, of the method, principle or theory by which it valued either the intangible or tangible property included in your petitioner's special franchise, and refused to inform your petitioner of the amounts, respectively and separately, of the valuations made by said board of the tangible and intangible property included in such special franchise, by reason whereof your petitioner was deprived of such a hearing as is guaranteed to it by the laws and constitution of the State, and as your petitioner is entitled to before a final assessment can be lawfully made against it.

That thereafter and before July 2, 1900, the said State Board of Tax Commissioners at its office in the city of Albany assumed to make its final valuation and assessment of your petitioner's said special franchise at the amounts and in the localities respectively hereinafter set forth as certified, and filed with the department of taxes and assessments of the city of New York a written statement duly certified by the secretary of the said State board of such valuation and assessment of the special franchise of your petitioner as finally fixed and determined by said State Board of Tax Commissioners, wherein it was stated and certified that the valuation of such special franchise of your petitioner was finally fixed and determined by said board at the sum of $7,608,184 in the borough of

Brooklyn, and at the sum of $1,879,445 in the borough of Queens.

Your petitioner further shows that, by the provisions of the Greater New York charter, the commissioners of taxes and assessments of the city of New York constitute the board of taxes and assessments for said city, and also are the department of taxes
4 and assessments in the city of New York, and were required by law after the 30th day of April in each year to prepare assessment-rolls for the several parts of said city, containing valuations of real and personal property, and to certify and deliver said assessment-rolls to the municipal assembly of said city on the first Monday of July in each year. That said commissioners of taxes and assessments, since the 30th day of April last, prepared the assessment-rolls of said real and personal property of the several parts of said city for the year 1900, and entered thereon, before the final review and certification of such rolls by them, the valuation of said special franchise of your petitioner at the sum of $9,487,629, in the borough of Brooklyn, being the sum of the assessments as so fixed by the said State board as aforesaid, and having annexed thereto their certificate that the said rolls were correct and in accordance with the entries in the several books of record in the said department, duly verified the same and delivered the said assessment-rolls to the municipal assembly of said city, as required by said law on the first Monday of July, being July 2d, 1900.

Your petitioner further shows, upon information and belief, that the said State board in making the assessment aforesaid of said special franchise, assumed and undertook to fix and determine the value thereof at a sum equal to the full and entire value thereof, and such assessment was the estimate and valuation by said State board of the full and entire value thereof.

That the tax law of the State defines, declares and makes special franchises for the purpose of assessment and taxation land, real estate or real property.

That in the city of New York no real estate or real property is assessed at its full value, but that all land, real estate and real property in said city, as elsewhere in the State, is assessed at a valuation equal to about sixty per cent. of its full value. That it is the official duty of the said State board to investigate and examine the
5 methods of assessment throughout the State and to furnish to local assessors information to aid them in making assessments of real and personal property, and said State board and each of its members well knew in making the assessment of said special franchise at its full value that land and real estate within the State, and especially within the city of New York, was assessed at less than its full value, and, notwithstanding such knowledge and information, and well knowing that to assess the special franchise, as aforesaid, of your petitioner at its full value would be to assess it at higher proportionate valuation than other real estate in said city, made the assessment aforesaid.

That your petitioner claims to be and is aggrieved by such assessment of such special franchise of your petitioner and is and will be

injured thereby, and your petitioner sets forth and alleges, on information and belief, that such assessment of said special franchise as so made and certified by said State board and as so entered on said assessment-rolls is illegal, and hereby specifies the following grounds of such illegality:

1. That the provisions of the act of the legislature of the State of New York known as chapter 712 of the Laws of 1899, and of the acts amendatory thereof, purporting to authorize the said Board of Tax Commissioners to assess special franchises is unconstitutional and void by reason of being in conflict with and in violation of the constitution of the State of New York and the Constitution of the United States, and particularly by reason of being in conflict with and in violation of section 2 of article X. of the constitution of the State of New York and of the provisions of the Constitution of the United States that no State shall deny to any person within its jurisdiction the equal protection of the laws or deprive any person of property without due process of law, or impair the obligation of contracts.

2. That the said act is unconstitutional, void and inopera-
6 tive because it does not prescribe any definite method of valuation, and that the said act is so vague and indefinite in such and other respects that it cannot be administered by the taxing officers or enforced by the courts, and particularly in that the said act does not provide any definite method by which the State Board of Tax Commissioners can value the intangible property of your petitioner included in its special franchise, and the State board did not adopt or proceed by any definite or reasonable method in valuing either the tangible or intangible property included in such special franchise, but the amount of such valuation thereof was reached by mere speculation or guess and not by the exercise of judgment upon evidence or facts, and that said State board did not assess each of the several special franchises of your petitioner separately, as required by law, but assumed and undertook to make a single assessment of all of the several special franchises of your petitioner, in each of said boroughs, as though all said special franchises constituted together a single franchise, contrary to the facts and the law, and that the said State board, in making such assessment, has failed, in such and other respects, to comply with the statutes in relation thereto.

3. That the refusal of the request and demand of your petitioner as aforesaid for information as to the respective valuations placed by said State board on the intangible property and on the tangible property included in your petitioner's special franchise was unlawful and rendered the assessment of the said special franchise of your petitioner by said State board illegal and void, and was a denial to your petitioner of such a hearing as your petitioner was entitled to under the laws and constitutions of the State of New York and of the United States, and that the enforcement of such assessment and the collection of the tax thereunder would deprive your petitioner of its property without due process of law, and would constitute a denial to your petitioner of the equal protection of the laws.

7 4. That neither at the time of such valuation and asses-

ment as aforesaid nor at any other time was said State Board of Tax Commissioners, or either of the persons composing said board, a tax commissioner, assessor, officer or person elected by the electors of the city of New York, or any portion thereof, to value or assess, or to value and assess for the purposes of taxation in said city, or any portion thereof, franchises, special franchises or real or personal property of any nature in said city or any portion thereof, nor had said board, nor any of the persons composing the same, been appointed by such authorities of said city as the legislature had designated a board, assessors, tax commissioner or tax commissioners, or other officer or person, to value or assess for purposes of taxation any franchises, special franchises or real property in said borough or city, but, on the contrary, commissioners of taxes and assesments of the city of New York, constituting the board of taxes and assessments of such city, and deputy tax commissioners had been duly appointed by duly constituted local authorities of such city in accordance with law, and during all the times herein mentioned were in office and duly authorized to assess for the purposes of taxation all of the property of your petitioner subject to assessment and taxation in said city, and said commissioner of taxes and assessments, constituting the board of taxes and assessments of the city of New York, were, by law, and particularly in pursuance of the Greater New York charter, the only assessors, officers or persons having any right, jurisdiction or authority to assess for the purposes of taxation any of the property of your petitioner in said city, or in any borough or other portion thereof, and always heretofore all tangible real property subject to assessment and taxation in the locality now constituting the city of New York, and in every portion thereof, has been assessed by the local assessors elected by the electors of the locality, or appointed by local authorities thereof, in pursuance of law.

8 5. That in pursuance of subdivision 21 of section 49 of the Greater New York charter the license fees therein specified of $20 for each car daily operated or used in the said borough of Brooklyn on this petitioner's railroad have been paid as therein required, and such license fees have been taken, as in said subdivision provided, in full satisfaction for the use of the streets and avenues in said borough of Brooklyn and in lieu of all other taxes, charges, impositions, tolls or imposts by reason of the intangible right or franchise of this petitioner to construct, maintain and operate its railroad and other tangible property in said streets and avenues, and such license fees and the other percentages, taxes, burdens and impositions charged upon, borne and paid by this petitioner have been, in pursuance of contracts between your petitioner and the State and municipality for whose benefit the same were borne and paid in lieu of, and exempt this petitioner from any tax which might otherwise be lawful-y imposed upon the said intangible property of your petitioner constituting a part of its special franchise, and the inclusion of any valuation of such intangible property of your petitioner in the assessment of your petitioner's special franchise is unauthorized

by law, unconstitutional and void as constituting double taxation and denying to this petitioner the equal protection of the laws and as depriving this petitioner of its property without due process of law and without compensation, and as imparing the obligations of said contracts in violation of the constitutions of the State of New York and of the United States.

Your petitioner further sets forth and alleges, on information and belief, that such assumed assessment and valuation of the special franchise of your petitioner is erroneous by reason of overvaluation, particularly of the tangible property included in such special franchise, and also of all of the property, generally, included in all of the special franchises of your petitioner, which were many in number, and all of which in each of said boroughs the said State board assumed and undertook to assess together as a single special
9 franchise, and at a much greater sum than would have been their total valuation or assessment of all said special franchises if each had been separately assessed, inasmuch as the total value of all of said special franchises would be much greater if all had been originally acquired as a single special franchise than the total of the separate values of each valued separately and independently, as they were actually acquired, and that whatever valuation was made by said State board of the tangible property included in said special franchise, in the borough of Brooklyn, over and above the sum of $1,587,171, and in the borough of Queens over and above the sum of $299,192, was overvaluation of such tangible property.

Your petitioner further sets forth and alleges, on information and belief, that such assessment and valuation of the special franchise of your petitioner is unequal in that said assessment of such special franchise has been made at a higher proportionate valuation than the assessments generally of other special franchises made by said State Board of Tax Commissioners for the same year both in said borough of Brooklyn and in the borough of Queens and elsewhere throughout the State of New York, and at a higher proportionate valuation than the assessments generally of other similar franchises made by said State board for the same year in the said borough and city, and in that said assessment of such special franchise has been made at a higher proportionate valuation than the assessments generally of other real property in said borough, and also throughout said city of New York by the board of taxes and assessments of the city of New York on the same roll on which the assessment of such special franchise of your petitioner have been entered, as aforesaid, by the same officers, inasmuch as all other real property gen-
10 erally in said borough and throughout the said city has been assessed generally and entered on said roll by said board of taxes and assessments at not more than 60 per cent. of its full and actual value, whereas the assessment as aforesaid of your petitioner's special franchise has been so assessed and entered on said rolls by the same officers at the said State board's assessment and valuation of its full value, which was more than its actual value as aforesaid,

and the extent of such inequality is 40 per cent. of the amount of the assessment of said special franchise of your petitioner.

Your petitioner further sets forth and alleges on information and belief that application was made in due time as hereinbefore set forth to the said State Board of Tax Commissioners to correct such assessment of your petitioner's special franchise at the time and place appointed and statements and complaints under oath were presented to and filed with said State board by your petitioner as hereinbefore set forth, which complaint specified as the respects in which the said assessment and valuation therein complained of was incorrect, the illegality and grounds thereof, and the overvaluation and extent thereof, and the inequality and extent thereof, substantially as hereinbefore set forth.

That no previous application has been made to any court or judge by your petitioner for an order for, or allowance of, or for a writ of certiorari to review said assessment.

Wherefore, your petitioner prays that a writ of certiorari may be allowed and issued out of this court directed to the said State Board of Tax Commissioners commanding them to certify and return to this court all and singular the proceedings had by and before them for fixing and determining said valuation of the said special franchise of your petitioner, with all the evidence, documents, reports, records and papers relating thereto or copies thereof in their
11 possession, or under their control, and all other information, submitted to or considered by them, concerning said assessment and valuation, together with a statement of the method, theory or principle adopted by them in fixing and determining said valuation of such special franchise and particularly of the tangible property included therein, and a statement of the amounts respectively and separately of the valuations of the tangible and the intangible property included in such special franchise as such valuations were respectively fixed and determined by them, to the end that their proceedings may be reviewed and corrected upon the law and the facts by this court, and that your petitioner may have such other and further relief as may be just and as the nature of the case may require.

THE BROOKLYN CITY RAILROAD COMPANY,
By THOMAS A. SWINN, *Secretary and Treasurer.*

STATE OF NEW YORK, }
Borough of Brooklyn, County of Kings, } ss.:

Thomas A. Swinn, being duly sworn, says that he is the secretary of The Brooklyn City Railroad Company, the petitioner named in and making the foregoing petition; said petition is true of his own knowledge, except as to the matters therein stated to be alleged on

information and belief, and as to those matters he believes it to be true.

THOMAS A. SWINN.

Sworn to before me this 16th day of July, 1900.

C. F. HIGHAM,
Commissioner of Deeds for the City of New York,
Residing in the Borough of Brooklyn.

12 At a special term of the supreme court, held at the court-house in the city of Albany, N. Y., on the 17th day of July, 1900.

Present: Hon. D. Cady Herrick, justice.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE BROOKLYN CITY RAILROAD COMPANY
against
THE STATE BOARD OF TAX COMMISSIONERS OF THE STATE OF NEW YORK.

Upon reading and filing the petition of the Brooklyn City Railroad Company, duly verified on the — day of July, 1900, and it appearing therefrom that there are proper grounds for the granting of a writ of certiorari, as therein prayed for, addressed to the State Board of Tax Commissioners, upon motion of Sheehan & Collin, attorneys for said petitioner, it is

Ordered, that the prayer of said petitioner be granted, and that a writ of certiorari issue out of and under the seal of this court to the State Board of Tax Commissioners of the State of New York, commanding said board to certify and return to this court, at a special term thereof, to be held at the court-house in the city of Albany, State of New York, on the fifteenth day of September, 1900, at the opening of the court on that day:

All and singular the proceedings had by and before them for fixing and determining said valuation of the said special
13 franchise of said petitioner, with all the evidence, documents, reports, records and papers relating thereto, or copies thereof in their possession or under their control, and all other information submitted to or considered by them concerning said assessment and valuation, together with a statement of the method, theory or principle adopted by them in fixing and determining said valuation of such special franchise, and particularly of the intangible property included therein, and a statement of the amounts, respectively and separately, of the valuations of the tangible and the intangible property included in such special franchise as such valuations were respectively fixed and determined by them, to the end that their proceedings may be reviewed and corrected upon the law and the facts

by this court; and that the petitioner may have herein such other and further relief as to the court may seem to be just.

That a copy of said return be served upon Sheehan & Collin, the petitioner's attorneys, at their office, No. 32 Nassau street, in the city of New York, on or before September 5, 1900.

I hereby dispense with the giving of any notice of the application for a writ of certiorari in this matter.

Dated July 17th, 1900.

D. CADY HERRICK,
Justice Supreme Court.

The People of the State of New York on the relation of The Brooklyn City Railroad Company to the State Board of Tax Commissioners of the State of New York, Greeting:

Whereas we have been informed by the petition of The Brooklyn City Railroad Company, the relator herein, verified on the — day of July, 1900, that said relator is a domestic corporation; that you, the said State Board of Tax Commissioners, heretofore fixed and determined the valuation of the special franchise of the said re-
14 lator for the year 1900 in and for the borough of Brooklyn, in the city of New York, at the sum of seven million six hundred and eight thousand, one hundred and eighty-four dollars ($7,608,184), and in the borough of Queens at the sum of one million eight hundred and seventy-nine thousand, four hundred and forty-five dollars ($1,879,445), and that the State Board of Tax Commissioners has filed with and certified to the department of taxes and assessments of the city of New York a statement of such valuation; and that the said department of taxes and assessments has entered such valuation, so filed with and certified to it, on the assessment-rolls of the city of New York, as an assessment of the special franchise of the relator at the sum of $9,487,629, and has completed such assessment-rolls with such valuation entered thereon, and on the second day of July, 1900, delivered such assessment-rolls so completed to the municipal assembly of said city; and

Whereas, said relator claims that you have disregarded its rights in making such assessment, and that the said assessment is illegal, in that the act purporting to authorize said State Board of Tax Commissioners to make such assessment is in violation of the provisions of the constitution of the State of New York and of the United States, and that the proceedings of the said State board thereunder have not complied with the statutes in such case made and provided, and that no proper and sufficient hearing was granted to the said relator, and for other reasons in said petition specified, and that said assessment is erroneous by reason of over valuation, as stated in said petition, and is unequal in that said assessment has been made at a higher proportionate valuation than the assessment of other property made by the same officers and entered on the same roll on which the said assessment by said State board was entered in the manner and to the extent set forth in said petition, and that the said

relator is and claims to be aggrieved, and is and will be injured thereby;

15 Now, therefore, we being willing to be certified of the proceedings, decisions and acts before you in this matter as to the manner of fixing the valuation of the special franchise of the relator in the boroughs of Brooklyn and Queens, in the city of New York, as aforesaid, do hereby command you, the State Board of Tax Commissioners, to certify and return to our supreme court, at a special term thereof, to be held at the court-house, in the city of Albany, in and for the county of Albany, on the 15th day of September, 1900, at the opening of the court on that day, all and singular the proceedings had by and before you in fixing and determining said valuation of the said special franchise, with all the evidence, documents, reports, records and papers relating thereto or copies thereof in your possession or under your control, and all other information submitted to or considered by you concerning said assessment, together with a statement of the method, theory or principle adopted by you in fixing and determining said valuation of such special franchise, and particularly of the intangible property included therein, and the amounts, respectively and separately, of the valuations of the tangible property and of the intangible property included in said special franchise as such valuations were fixed and determined by you; all this to the end that your proceedings may be reviewed and corrected upon the law and the facts by this court, and that the relator may have such other and further relief as to the court shall seem just.

Witness, Hon. D. Cady Herrick, one of the justices of the supreme court in the third judicial district, at the city of Albany, this 17 day of July, 1900.

By the court,

[SEAL.] P. E. McCABE, *Clerk.*

SHEEHAN & COLLIN,
Attorneys for the Relator,
No. 32 Nassau Street, New York City.

16 The foregoing writ is hereby allowed this 17th day of July, 1900.

D. CADY HERRICK,
Justice of the Supreme Court.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE BROOKLYN CITY RAILROAD COMPANY
against
THE STATE BOARD OF TAX COMMISSIONERS.

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding that the order for the writ of certiorari therein and the writ of certiorari be treated and regarded as having

been corrected and amended by striking therefrom the following words: "A statement of the method, theory or principle adopted by you in fixing and determining said valuation of such special franchise, and particularly of the intangible property included therein," and by inserting in lieu thereof the following words: "A concise statement of such other facts as may be pertinent and material to show the value of the property assessed and the grounds of the valuation made by you," without the entry of an order so amending and correcting said order and writ and without prejudice.

Dated March 1st, 1901.

SHEEHAN & COLLIN,
Attorneys for Relator.
JOHN C. DAVIES,
Attorney-General, Attorney for Defendant.

17 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Brooklyn City Railroad
against
THE STATE BOARD OF TAX COMMISSIONERS.

To the supreme court of the State of New York:

George A. Priest, J. Edgar Leaycraft and Lester F. Stearns, constituting the State Board of Tax Commissioners of the State of New York, respectfully return to the writ of *certiorari* issued out of this court on the 7th day of July, 1900, as follows:

I.

This return, except in so far as it is otherwise stated, or where the matters herein returned, are matters of record, or statements of fact as such, is made upon information and belief.

II.

All of the proceedings required by statute for the purpose of making and certifying the valuation aforesaid were had before said board, and done and performed in compliance with the statute in such case made and provided, namely, the provisions of chapter 712 of the Laws of 1899, and the amendment thereto.

III.

18 The State Board of Tax Commissioners was and is authorized by law to make the valuation and assessment complained of, and in the manner and form as made by it and the statute under which the said valuations were made is in accordance with the constitution and valid and binding upon the relator, and all of the acts done and performed by said State Board of Tax Commissioners, as set forth in the petition herein, were in accordance with

law and valid under the constitution and laws of the State of New York and of the United States.

IV.

Your respondents further return that heretofore and on the 31st day of October, 1899, the relator filed with the board a report for the year ending June 30th, 1899, verified October 30th, 1899, by Thomas P. Swin, its secretary and treasurer, a copy of said report and papers and exhibits forming a part thereof, and the papers hereinafter set forth as having been filed at the hearing before said board were before said board at the time of fixing the valuation of the special franchise of the relator.

Copies of said reports, papers and documents are hereto annexed and made a part of this return, and marked Exhibits "A," "B," "C," "D," "*D*" and "E."

V.

A notice in writing was duly given to the relator that the said State Board of Tax Commissioners would meet at its office, in the city of Albany, on the 10 day of April, 1900, to hear and determine any complaint concerning said assessment. At the time fixed in said notice or to which the matter was adjourned, the relator appeared and filed certain papers and was heard by counsel. Copies of said papers being hereto attached as aforesaid.

VI.

That the petitioner is in no wise aggrieved by the action of the State Board of Tax Commissioners in the premises and that the sum fixed by it as the valuation of its special franchise in the
19 boroughs of Queens and Brooklyn, in the city of New York, is neither erroneous nor illegal, nor is the same an overvaluation of such special franchise in said borough.

That the rights, permission and franchises set out in the petition of the relator constitute a special franchise as the same is defined by the tax law, upon which the relator is subject to a special franchise tax, and do not constitute separate and distinct special franchises so that the valuation is required to be fixed separate and apart from each other.

VII.

That your respondents have not knowledge or information sufficient to form a belief as to the exact percentage of the assessment by the local authorities of the said boroughs of Queens and Brooklyn, in the city of New York, of other real property in said boroughs for the year 1900, and that your respondents have decided the sum of $9,187,629 to be the full and true value of the special franchises of the relator in the said boroughs of Brooklyn and Queens, in said city, and valued the same for the assessment at that sum.

VIII.

Your respondents further allege and return that at and previous to the time of making such assessment, they had before them certain facts and information other than those communicated to them on behalf of the relator. That at and previous to the time when the assessment and valuation of the special franchise of the relator was made by your respondents, they had made inquiry, examination and investigation as to the value of the special franchise of the relator in said boroughs of Brooklyn and Queens, city of New York. That such inquiry, examination and investigation was made by and on behalf of this board through its agents and employees, who had obtained knowledge and information and formed opinion as to the value of the special franchise of the relator assessed and in connection therewith of the value of the property of the relator, real and personal, in said boroughs, it being impracticable by reason of the large number of special franchises assessed by your respondents for them to make personal examination of the property of this relator; and from such inquiry, examination and investigation, together with the papers and documents produced before it, it decided the value of the special franchise of the relator to be the full sum of $9,487,629, and it fixed the value of such special franchise for the purpose of assessment at the said sum of $9,487,629, which your respondents believe to be a just and true valuation, and which they decided to be the sum at which the said special franchise of the relator was properly assessable for the year 1900, after hearing the relator and after consideration of the matters presented by it as grounds for reduction.

IX.

That your respondents allege and return that the petitioner was allowed in all respects the hearing provided for and contemplated by section 44 of article 2 of the tax law and alleges that the said relator had a full and fair hearing by its counsel orally and submitted and presented to the board all documents and papers desired to be submitted by it.

X.

That the facts pertinent and material, to show the value of the property assessed on the roll which were considered by your respondents and the grounds for the valuation of such special franchise by them, included the value of the real estate of such corporation situate in the streets, highways and public places in said boroughs of Brooklyn and Queens, in city of N. Y., aside from and irrespective of the use and right to use such streets, highways and public places, together with the value of the use and the right to use said streets, highways and public places of said boroughs by the relator, as such value has been fixed and determined upon the evi

dence, papers and documents before said board; which papers and documents give, among other things, the cost of the prop-
21 erty, the income therefrom and other facts going to show the value thereof; and from examination, investigation and inquiry made by and on behalf of the said board as to the value of said property. That in so assessing such special franchise and in arriving at the valuation thereof, your respondents have not included in such assessment and valuation any property except such as is situate in, above, upon or running through the public streets and public places of said boroughs including the franchises, rights, authority or permission to construct, operate and maintain its foundations, roadbed, substructures and superstructures, with their appliances in, above, upon, or through said streets and public places; nor have they included the value of the right to be or the franchise to be a corporation; nor have they included the value of the good-will of the business carried on by it; nor have they included the value of any property other than that defined as a special franchise by subdivision 3 of section 2 of the tax law. That such assessment as made of such special franchises includes the value of the tangible and intangible property in said streets, and has been arrived at upon consideration of all the facts and circumstances affecting the value of said property, including the use or right to use said streets and public places, which your respondents have been able to ascertain.

XI.

Your respondents further return that they do not admit any of the allegations in the petition except so far as the same are shown to be true by this return and the papers thereto annexed and referred to and forming a part thereof.

In witness whereof, the undersigned, chairman of the State Board of Tax Commissioners, has hereunto set his hand this 22d day of March, 1901.

GEO. E. PRIEST, *Chairman.*

22 STATE OF NEW YORK, }
County of Albany, } ss.:

George E. Priest, being duly sworn, deposes and says that he is chairman of the State Board of Tax Commissioners; that he has read the foregoing return and knows the contents thereof; that the same is true to the knowledge of deponent, except as to those matters therein alleged to be stated on information and belief, and as to those matters he believes it to be true.

GEO. E. PRIEST.

Subscribed and sworn to before me this 22d day of March, 1901.

MILLICENT FELLOWS,
Notary Public, Albany Co.

EXHIBIT A.

Report of the Brooklyn City Railroad Company, Brooklyn, New York, to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1899.

OFFICE OF THE STATE BOARD OF TAX COMMISSIONERS,

ALBANY, *October* 1*st*, 1899.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899, a copy of which is enclosed herewith.

It is requested that you complete and forward such report within thirty days, as required by that act.

Very respectfully,

STATE BOARD OF TAX COMMISSIONERS.

23 *Extract from Law Relating to Taxation of Special Franchises.*

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate" and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same, in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and under-

wood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State.

24 A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

SCHEDULE A.

Title of company, The Brooklyn City Railroad Company.
General offices at 168 and 170 Montague St., Brooklyn, N. Y.
Date of close fiscal year, June 30th.
For information concerning this report address Thomas P. Swin, sec. & treas., 168 and 170 Montague St., Brooklyn, New York.

Officers of the Company, with Address.

President, Edward Merritt, Brooklyn, New York.
Vice-President, Edward D. White, Brooklyn, New York.
Secretary, Thomas P. Swin, Brooklyn, New York.
Treasurer, Thomas P. Swin, Brooklyn, New York.
General manager (have none.)

25 SCHEDULE B.

Description of special franchise showing streets, highways, or public places possessed or rights enjoyed, and in what village, tax district or districts same is located, and statement of maps accompanying this report.

The special franchise of the Brooklyn City Railroad Company consists of its right, privilege and franchise to construct, maintain and operate its surface railroads upon certain streets, avenues, highways and public places in the boroughs of Brooklyn and Queens in the city of New York, and of its tangible real property located in such streets, avenues, highways and public places. All of the property, rights, privileges and franchises of the Brooklyn City Railroad Company, including its special franchise, were leased to the Brooklyn Heights Railroad Company by instrument in writing, dated February 14, 1893, for the period of 999 years from the date thereof. The Brooklyn Heights Company entered into possession of all such property, rights, privileges and franchises on June 6, 1893, and has since continued in possession thereof, and has since been under

obligation to maintain and operate the said leased railroads, property, rights, privileges and franchises under said lease.

In and by said lease the Brooklyn Heights Railroad Company assumed and agreed to pay all taxes, assessed or levied, upon or by reason of the said property, rights, privileges and franchises so leased, and to maintain the same. Herewith is presented a map showing streets, avenues, highways and public places in the boroughs of Brooklyn and Queens, in, under, above, upon or through which the Brooklyn City Railroad Company has acquired rights or permissions to construct, maintain and operate its railroads.

This report is, therefore, made by the Brooklyn City Rail-
26 road Company upon the basis that the assessment of its special franchise will be made to the Brooklyn Heights Railroad Company, the lessee, in accordance with law and with the opinion of Hon. J. Newton Fiero, counsel designated by the attorney-general, submitted to State Board of Tax Commissioners, and that no assessment will be made upon the Brooklyn City Railroad Company for or on account of its special franchises, and upon the further basis that the report of the Brooklyn Heights Railroad Company will contain all the information which would otherwise be required of the Brooklyn City Railroad Company under this schedule. But further information, if desired, will be promptly furnished.

This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

SCHEDULE C.

Copy of special law, grant, ordinance, or contract or reference to general law under which "special franchise is held, possessed, or enjoyed and statement of any condition, obligation, or burden imposed upon such special franchise or under which the same is enjoyed."

Inasmuch as the special franchise tax of the Brooklyn City Railroad Company is assessable to the Brooklyn Heights Railroad Company, as stated in Schedule B hereof, and the Brooklyn Heights Railroad Company will necessarily be required to give the information here asked for, no report is supposed to be required under this schedule for the Brooklyn City Railroad Company, but, if required, will be promptly furnished.

SCHEDULE D.

Statement of Assets and Liabilities, June 30, 1899.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate and improvements	$14,195,683 06	Capital stock	$12,000,000 00
Cost of equipment	1,729,316 94	Funded debt	6,925,000 00
Stock and bonds of other companies		Accounts and bills payable	34,475 86
Material and supplies		Interest on funded debt due and accrued	
Accounts and bills receivable	353,371 05	Rentals due and accrued	
Cash on hand	23,157 32	Dividends unpaid	
Profit and loss		Profit and loss	342,052 51
Total	$19,301,528 37	Total	$19,301,528 37

SCHEDULE E.

Capital Stock.

	No. shares.	Total par value.	Dividends declared during year. Rate.	Dividends declared during year. Amount.	Market value during year. Highest.	Market value during year. Lowest.	Market value during year. Present.
Common issued	1,200,000	From surplus. $12,000,000	1% 10%	$120,000 1,200,000			
Preferred issued					250	240	240
Total	1,200,000	$12,000,000	11%	$1,320,000			

SCHEDULE F.

Funded Debt.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest. Rate.	Interest. When payable.	Market value during year. Highest.	Market value during year. Lowest.	Market value during year. Present.
First cons. mtge.	July 1, 1891	25 & 50 yrs.	$6,000,000	5 %	Jan. and July	117	111	114
Brooklyn Crosstown. "	June 27, 1888	20 "	200,000	5 "	" " "	No quotations as bonds are not in market		
Cal. Cem. G. and B. "	June 1, 1887	20 "	200,000	6 "	June and Dec			
N. Wmbgh. and F'h. "	Feb. 1, 1897	19 & 44 "	200,000	4½ "	Feb. and Aug.			
G'p't and Lor. "	May 1, 1885	25 "	125,000	6 "	May and Nov.		"	
Grand St. and N. "	July 1, 1886	50 "	200,000	5 "	April and Oct.		"	

29 SCHEDULE G.

Statement of Receipts and Disbursements for Year Ending June 30, 1899.

Receipts.	Amount.
From actual operation	
Interest and dividends	$14,327 24
Rentals	1,548,500 00
Other sources	13,852 62
Sales of stocks and bonds	
Temporary loans	
Deficit	
Total	$1,576,679 86

Disbursements.	Amount.
Salaries of general officers and clerks	$12,495 00
Law expenses	
Other general expenses	1,357 62
Maintenance and reconstruction or new construction paid from earnings	
Maintenance, reconstruction or new construction paid from other sources	
Rentals	
Interest paid	348,500 00
Taxes on capital stock and earnings paid directly by B. H. R. R. lessee	
Taxes on property in this State paid directly by B. H. R. R. lessee	
Taxes on property in other States	
-ividends paid 10% common stock	
Dividends paid 1% preferred stock from surplus accrued before date of lease to B'klyn H'ts R. R.	1,200,000 00
Surplus	$14,327 24

30

SCHEDULE H.

Statement in Detail of Rentals Paid.

Name of lessor.	Annual rental paid by lessee.	Portion used for payment of interest on debt of lessor.	Portion used for payment of dividends on capital stock of lessor.
The Brooklyn City Railroad Company.... And all taxes and assessments in addition which are paid directly by lessee.	$1,548,500	$348,500	$1,200,000
Total amount of annual rental.....			

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.
The Brooklyn Heights Railroad Company.....	$1,548,500

SCHEDULE K.

Statement of Cost, Value on Basis of Reproduction and Assessment of Real Estate in Each Tax District.

* Name of tax district wherein located. (Give village, if one, and county.)	Cost of tangible real property included in "special franchise."	Value of tangible real property included in "special franchise" on basis of cost of reproduction.	Cost of real property not included in "special franchise."	Value of real property not included in "special franchise" on basis of cost of production.	Last assessment of real property included in "special franchise." *	Last assessment of real property not in connection with "special franchise." *	Give total number of miles of tracks and sidings, or wires, cables, or other conductors, or of main pipes and number of service-pipes, as the case may be, in, upon, under, or over streets and highways in each tax district.

Inasmuch as the Brooklyn Heights Railroad Company, the lessee of all the property, rights, privileges and franchises of the Brooklyn City Railroad Company, has possessed all of the property, rights, privileges and franchises of the Brooklyn City Railroad Company since June 6, 1893, as more fully stated in Schedule B hereof, the data for the information asked for in this schedule is necessarily in the possession of the Brooklyn Heights Railroad Company, and, as the Brooklyn Heights Railroad Company is assessable and the Brooklyn City Railroad Company is not assessable for or on account of the special franchise of the Brooklyn City Railroad Company, and the information asked for under this schedule must be necessarily required of the Brooklyn Heights Railroad Company, no further report is made by the Brooklyn City Railroad Company under this schedule; but, if further information be required it will be promptly furnished.

* Name of each tax district in which assessments are made for real estate.
* Give facts in this column when such property has been separately assessed.

32 SCHEDULE L.

Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock, and All Other Non-taxable Securities Owned.

Description.	Amount.
None owned.	
Total.....	
Value of tangible personal property	See Schedule B.
Total assessment of personal property.....	

SCHEDULE M.

Details of Roads Owned and Leased.

Name of road.	From	To	Miles owned.	Miles leased.
The Brooklyn City Railroad Company.	See Schedule B and map.	Total mileage.....		

This schedule is applicable only to railroad corporations.

SCHEDULE N.

Show changes, if any, between June 30, 1899, and October 1, 1899, in real estate or otherwise, affecting the purpose of this report.

None.

Company.	Brooklyn.			Queens.			Total.			Per mi e double track.	
	1900 State board.	Our val. of tangible pr.	1899 local board.	1900 State board.	Our val. of tangible pr.	1899 local board.	1900 State board.	Our val. of tangible pr.	1899 local board.	State b ard.	Our val.
Brooklyn Heights	250,500	20,439 66	75,000				250,500	20,439 66	75,000	77 ,279	61,380
Brooklyn City	10,559,900	1,587,171 00	2,500,000	950,500	299,192 93	600,000	11,510,400	1,886,363 93	3,100,000	{ B. 12 Q. 4,046	19,395
B., Q. C. & S.	3,515,550	199,499 93	460,000	456,600	75,524 78	185,000	3,972,150	275,024 71	645,000	{ B. 23,582 Q. 15,099	15,607 14,362
Nassau Electric	6,375,500	994,742 61	2,735,000				6,375,500	994,742 61	2,375,000	10 ,094	26,315
Brooklyn Union Elevated	4,760,000		3,625,000							,346	16,592
South Side and Brooklyn Branch	848,600	3,220,585 20	575,000				5,608,600	3,220,585 20	4,200,000	27	
Kings County Elevated	3,040,560	1,382,973 00	2,460,000				3,040,560	1,382,973 00	2,460,000	,745 34 ,088	158,780 158,779
Total	29,359,670	7,414,411 40	12,070,000	1,407,100	374,717 71	785,000	30,766,770	7,789,129 11	12,855,000	14 ,588	37,597

34 The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the copartnership making the same.

City of New York, } ss.:
State of New York, County of Kings, }

Thomas P. Swin, secretary and treasurer of the Brooklyn City Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same declares them to be a true, full and correct statement of the property of said company and the value thereof at the close of the year ending June 30, 1899, as well as of its financial condition and affairs on the said date, and a like true, full and correct statement of the real property of said company on the first day of October, 1899, to the best of my knowledge and belief.

THOMAS P. SWIN.

[L. S.]

Subscribed and sworn to before me this 30th day of October, 1899.

A. L. BROUGHAM,
Commissioner of Deeds, City of New York, Residing in Borough of Brooklyn, Kings County, N. Y.

35 EXHIBIT B.

Before the State Board of Tax Commissioners.

In the Matter of the Assessment of the Special Franchise of THE BROOKLYN CITY RAILROAD COMPANY.

To the State Board of Tax Commissioners:

Referring to the notice by the State Board of Tax Commissioners to the Brooklyn City Railroad Company, dated March 20, 1900, that your honorable board has made an assessment upon the special franchises constructed, maintained or operated by said railroad company, and has fixed the valuation of such special franchise situated in the city of New York, borough of Brooklyn, at $10,559,900, and in the city of New York, borough of Queens, at $950,500, making a total of $11,510,400, and that your honorable board will meet at its office on the 10th day of April next at 10 o'clock a. m. to hear and determine any complaint concerning such assessment, and that your honorable board prefers that the grounds claimed for reduction be verified and presented in writing in as concise a manner as possible.

The Brooklyn City Railroad Company respectfully represents to your honorable board that this company has been unable to ascertain on what basis or theory or by what rule or principles of valuation your honorable board has proceeded in fixing such valuation of

such special franchise or what valuation of any of the different items of property which together constitute such special fran-
36 chise has been fixed by your honorable board, and particularly what valuation of the tangible property included in such special franchise or of any item thereof has been fixed by your honorable board, or what valuation of the intangible property included in such special franchise consisting of the franchises, rights or permission to construct, maintain and operate a street-surface railroad in, under, above, on or through streets, highways or public places has been fixed by your honorable board.

And the Brooklyn City Railroad Company further represents to your honorable board that such information is necessary to enable the said railroad company to state the grounds upon which it claims a reduction of said valuation; and to enable said railroad company to state in its complaint to your honorable board concerning such assessment the respects in which such assessment is incorrect, and in order that the said railroad company may state in its complaint and point out and prove to your honorable board the respects in which such assessment is incorrect; and that the failure of your honorable board to give such information will constitute a refusal by your honorable board to give to said railroad company such a hearing of its complaint concerning such assessment as is guaranteed to it by the constitution and the laws of the State.

Therefore, the Brooklyn City Railroad Company respectfully requests and demands that your honorable board shall before or at the time appointed for such hearing inform the Brooklyn City Railroad Company of the valuation of each of the different items of property, together constituting the special franchise of said railroad company as fixed by your honorable board, and particularly the valuation of the tangible property of said railroad company included in said special franchise as fixed by your honorable board, and of the basis, theory, rule or principle by which the intangible property included in such special franchise has been valued
37 by your honorable board, and of the value thereof as so fixed, and by which the total valuation of such special franchise has been fixed by your honorable board.

Very respectfully,

BROOKLYN CITY RAILROAD COMPANY,
By THOMAS P. SWIN, *Secretary.*
BROOKLYN HEIGHTS RAILROAD COMPANY, *Lessee.*
T. S. WILLIAMS, *Vice-President.*

EXHIBIT D.

Concerning the Assessments by the State Board of Tax Commissioners of the Special Franchises of the Brooklyn City Railroad Company.

To the State Board of Tax Commissioners of the State of New York:

The complainant, The Brooklyn City Railroad Company, hereby

respectfully makes complaint concerning the assessment made by the State Board of Tax Commissioners of the special franchises of this complainant in New York city, borough of Brooklyn, for the year 1900, whereby the value of such special franchise was, by such board, fixed at $10,559,900, and concerning the assessment made by the State Board of Tax Commissioners of the special franchise of this complainant in New York city, borough of Queens, for the year 1900, whereby the value of such special franchise was by such board, fixed at $950,500, making a total assessment for both boroughs of $11,510,400.

This complainant specifies the following respects in which said assessments are incorrect:

I. The said assessments are incorrect, erroneous and illegal by reason of overvaluation, as shown by the reports and affidavits filed by this complainant with said board, which this complainant believes to be true, and to which this complainant
38 hereby refers as showing such overvaluation, for particulars and date as to the full actual value of such special franchises and as to the character and value of the various items of property, together constituting the whole of each of such special franchises, of which there were many, and all of which in each of said boroughs were assessed together as a single special franchise and at a much greater sum than would have been the total assessment of all if each had been separately assessed as separate and independent special franchises as required by law, inasmuch as the total value of all of said special franchises would be much greater if all had originally been acquired as a single special franchise, than the total of the separate value of each separately and independently as they were actually acquired, and this complainant hereby makes such reports and affidavits a part of this complaint, the same as if herein fully set forth.

II. The said assessments are incorrect, erroneous and illegal by reason of inequality, in that said assessments of such special franchises have been made at a higher proportionate valuation than the assessments generally of other special franchises made by said board for the same year, both in said boroughs of Brooklyn and Queens and elsewhere throughout the State of New York, and at a higher proportionate valuation than the assessments generally of other similar franchises made by said board for the same year in the said boroughs, and in that said assessments of such special franchises of this complainant have been made at a higher proportionate valuation than the assessments generally of other property in said boroughs of Brooklyn and Queens, and also throughout said city of New York by the commissioners of taxes and assessments of the city of New York on the same roll on which the assessments of such special franchises of this complainant are to be entered when certified to them by said State board, inasmuch as all other real property generally in said boroughs of Brooklyn and Queens and through-
39 out the said city of New York is assessed generally by said

commissioners of taxes and assessments at not more than from 60 to 75 per cent. of its full and actual value.

III. The State Board of Tax Commissioners have refused to inform this complainant, on the request of this complainant duly made, as to what valuation of any of the items of property together constituting such special franchises, has been fixed by said board, and as to what theory, basis or principle has been adopted by said board in fixing the value of such special franchises, and particularly of the intangible property included therein; and such refusal constitutes a denial to this complainant of the hearing, concerning such assessments, guaranteed to this complainant by the constitution and laws of the State, and prevents this complainant from making further specifications than are herein contained of the respects in which said assessments are incorrect.

IV. The said assessments of such special franchises of this complainant are illegal, in that the provisions of the statute purporting to authorize the State Board of Tax Commissioners to make such assessments have not been complied with by said board, and are unconstitutional and void, and said State Board of Tax Commissioners has no authority to make such assessments, and in that this complainant has, in pursuance of the provisions of subdivision 21 of section 49, chapter 378 of the Laws of 1897, known as the Greater New York charter, regularly paid the car license fees therein required to be paid, since such provisions have been in force, and it is also in said subdivision provided that such license fees shall be taken in full satisfaction for the use of the streets or avenues in that portion of the city of New York heretofore known as the city of Brooklyn, and by reason of said provisions no other tax is assessable to or payable by, this complainant by reason of its franchise, permission or consent to construct, maintain or operate its railroads in the streets or avenues of the borough of Brooklyn.

40 V. The said assessments are illegal, in that they should have been made to the Brooklyn Heights Railroad Company, which is the lessee of all the railroads and properties of this complainant, as fully set forth in said reports and affidavits.

THE BROOKLYN CITY R. R. CO.,
By THE BROOKLYN HEIGHTS R. R. CO., *Lessee*,
By T. S. WILLIAMS, *Vice-President*.

STATE OF NEW YORK,)
County of Albany, City of Albany,)

Timothy S. Williams, being duly sworn, did depose and say that he is vice-president of the Brooklyn Heights Railroad Company, the lessee of the corporation which makes the foregoing complaint; that he is authorized by said corporation to make such complaint in the name and on behalf of said corporation, and that he has knowledge of the facts therein contained; that the foregoing complaint is true of his own knowledge, except as to matters therein

stated on information and belief, and as to such matters he believes them to be true.

T. S. WILLIAMS.

Subscribed and sworn to before me this 10th day of April, 1900.
ELEANOR DOUGLAS COSGROVE,
Notary Public.

Before the State Board of Tax Commissioners.

In the Matter of the Assessment of the Special Franchise of THE BROOKLYN CITY RAILROAD COMPANY.

To the honorable the State Board of Tax Commissioners:

41 The Brooklyn City Railroad Company complains of the assessment made by the State Board of Tax Commissioners of and upon the special franchise of the Brooklyn city railroad, situated in the city of New York, borough of Brooklyn, and in the city of New York, borough of Queens, and of the valuations of each of such special franchises, as fixed and determined by said board. Such assessment and valuation of said franchises are so fixed and determined in the borough of Brooklyn, city of New York, being $10,559,900, and in the borough of Queens, city of New York, $950,500.

Your complainant avers that each of said assessments and valuations is erroneous, unequal, and illegal, in the following respects:

First. Each of said assessments and valuations largely exceeds the value of said special franchise.

Second. The assessment and valuation of the special franchise in the borough of Queens, as fixed and determined by said board, greatly exceeds its value.

Third. The assessment and valuation of the special franchise in the borough of Brooklyn greatly exceeds its value.

Fourth. Each of said assessments and valuations is erroneous and unequal in that each has been made at a higher proportionate valuation than the assessment of other real estate on the tax rolls of the city for the same year. Real estate in the borough of Brooklyn is and has been generally and almost uniformly assessed at an amount not in excess of 70 per cent. of its value, and real estate in the borough of Queens is and has been generally and almost uniformly assessed at an amount not in excess of 70 per cent. of its value, while the special franchise of your complainant, in each of said boroughs, is assessed and valued by your honorable board in an amount greatly in excess of its actual value.

Fifth. Your complainant further avers that each of said
42 assessments is illegal and erroneous, not only by reason of the overvaluations and inequalities hereinbefore stated, but also for the reason that the act entitled, "An act to amend the tax law in relation to the taxation of public franchises as real property," being chapter 712 of the Laws of 1899, under which your honorable board assumed to and did make such assessments and valuations, is

unconstitutional and void and confers no power or authority upon your honorable board to make said assessments or valuations, or either of them.

Sixth. Your complainant further avers that the said assessments and valuations and each of them are also illegal and erroneous in that your honorable board has omitted to assess and value separately the tangible and intangible property constituting said special franchise.

Seventh. Your complainant further avers that by reason of said unequal, erroneous and illegal assessments and valuations, it will sustain injury and damage.

THE BROOKLYN CITY RAILROAD CO.,
By THOMAS P. SWIN, *Secretary.*

CITY AND COUNTY OF NEW YORK, *ss.:*

Thomas P. Swin, being duly sworn, says that he is the secretary of the Brooklyn City Railroad Company, and that he has read the foregoing complaint, and that the same is true to his own knowledge except as to the matters therein stated upon information and belief.

That the reason this verification is made by deponent and not by the complainant is because the complainant is a domestic corporation of the State of New York, and that deponent is secretary of said corporation.

THOMAS P. SWIN.

Sworn to before me this 9th day of April, 1900.
JOHN T. DELANEY,
Comm'r of Deeds, N. Y. City.

43 At a special term of the supreme court of the State of New York, held in and for the county of Albany, at the court-house, in the city of Albany, on the 16th day of April, 1901.

Present: Hon. D. Cady Herrick, *justice.*

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE BROOKLYN City Railroad Company
against
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. STEARNS, Composing and Constituting the State Board of Tax Commissioners of the State of New York.

A writ of certiorari having heretofore been duly allowed in each of the above-entitled proceedings, pursuant to the provisions of article XI. of the tax law as amended by chapter 712 of the Laws of 1899, upon the verified petitions of the above-named relators to review the action of the said Board of Tax Commissioners in assessing the several special franchises of the said relators; proof of due service on the said commissioners of the said writs, together with

copies of the petitions on which they were granted and of the orders directing the said writs to issue having been made; the said Board of Tax Commissioners having made a return to said writs; further proceedings herein having been from time to time adjourned by stipulation between the attorneys for the respective parties;
44 no hearing having been had upon the said returns; the said relators, by their attorneys, Messrs. Sheehan & Collin, having made application to this court for an order appointing a referee to take such evidence herein as the court may direct and to report the same to this court with their findings of fact and conclusions of law; the attorney-general of the State of New York, on behalf of the said State Board of Tax Commissioners, having appeared and consented to such reference and to the granting and entry of an order of reference.

Now, on the said petition, order, writ and return and on all the proceedings heretofore had herein, on motion of the said attorneys for the relators and the attorney-general appearing and making no objection thereto; it is

Ordered that it be, and it hereby is, referred to Hon. Robert Earl, residing at Herkimer, county of Herkimer, in the State of New York, to take and report to this court, with all convenient speed, such evidence upon the several issues of fact raised by the said petition, writ and return as may be adduced before him by either of the parties hereto, with his findings of fact and conclusions of law.

It is further ordered that the hearings under this order be had at such times and places as the said referee may direct; that the said referee shall have power to adjourn said hearings from time to time as justice may require, and to compel the attendance of witnesses and the production of papers.

D. CADY HERRICK,
Jus. Sup. Ct.

45 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE BROOKLYN CITY RAILROAD COMPANY
against
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. STEARNS, Constituting the State Board of Tax Commissioners of the State of New York.

Appearances: For the plaintiff, Sheehan & Collin; for the defendant, Deputy Attorney General H. B. Coman and J. N. Fiero.

The proceedings in the above-entitled matter, before Hon. Robert Earl, referee, as follows:

TIMOTHY S. WILLIAMS, sworn for the plaintiff, testified:

The Brooklyn City Railroad Company is a corporation organized

under the general law of the State of New York, December 17, 1853, and owns and operates railroads in the boroughs of Brooklyn and Queens, city of New York. The company has leased for 999 years, from February 14, 1893, all its property, franchises and rights to the Brooklyn Heights Railroad Company, and by the terms of that lease the Brooklyn Heights Railroad Company is obliged to pay all of the taxes on the property of the leased company. The assessment by the State Board of Tax Commissioners of the special franchises of the Brooklyn City Railroad Company, as of the second Monday of January, 1900, and as reported to the company,
46 was $7,608,184 for the borough of Brooklyn and $1,879,445 for the borough of Queens, making a total for both boroughs of $9,487,629. The assessment as entered on the books of the local assessors was for the borough of Brooklyn $9,487,629, and for the borough of Queens nothing. The special franchises of the Brooklyn City Railroad Company, as constituted and constructed on the second Monday of January, 1900, consisted of forty-five different franchises, granted to thirteen different companies or individuals in the boroughs of Brooklyn and Queens. These franchises were formerly the property of the following companies, all of which, with the exception of the Brooklyn, Bergen Beach and Canarsie Railroad Company, were merged into the Brooklyn City Railroad Company prior to January 1, 1900, and prior to the lease to the Brooklyn Heights Railroad Company. These thirteen different companies are as follows:

Brooklyn City Railroad Company, incorporated December 17, 1853.

Grand Street and Newtown Railroad Company, incorporated August 18, 1860; merged with Brooklyn City Railroad Company, October 31, 1890.

Greenpoint and Williamsburg Railroad Company, incorporated April 23, 1864.

Nassau Railroad Company, incorporated March 3, 1865.

The last two companies, the Greenpoint and Williamsburg Railroad Company and the Nassau Railroad Company, were consolidated by chapter 576 of the Laws of 1868, special law, under the name of Brooklyn City, Hunter's Point and Prospect Park Railroad Company, incorporated July 31, 1868.

It is stipulated the special laws referred to in this evidence
47 and the resolutions of the common council are considered in evidence, without specific mention in each case.

By chapter 453 of the Laws of 1872, a special act, the name of the Brooklyn City, Hunter's Point and Prospect Park Railroad Company was changed to Brooklyn Crosstown Railroad Company.

The Brooklyn Crosstown Railroad Company was merged with the Brooklyn City Railroad Company on October 31, 1890.

The Williamsburg and Flatbush Railroad Company, incorporated January 19, 1866, was sold under foreclosure October 6, 1873, and was succeeded by the New Williamsburg and Flatbush Railroad

Company, inco-porated October 28, 1873, which was merged with the Brooklyn City Railroad Company on October 31, 1890.

The Bushwick Railroad Company, incorporated March 20, 1867, was merged with the Brooklyn City Railroad Company October 31, 1890.

The Greenpoint and Lorimer Street Railroad Company, incorporated November 6, 1884, was merged with the Brooklyn City Railroad Company October 31, 1890.

The Calvary Cemetery, Greenpoint and Brooklyn Railroad Company, incorporated January 3 and 16, 1885, was merged with the Brooklyn City Railroad Company October 31, 1890.

South Brooklyn Street Railroad Company, incorporated September 29, 1886, was merged with the Brooklyn City Railroad Company July 12, 1892.

Certain of the franchises of the Brooklyn, Bergen Beach and Canarsie Railroad Company, incorporated November 15, 1893, were assigned to the Brooklyn City Railroad Company or its lessee in 1896.

I have here a map, "B 1," showing the special franchise as
48 of the second Monday of January, 1900, according to the companies in the Brooklyn City Railroad system to which the franchises were granted. (Offered and received in evidence and marked "Exhibit B 1.")

The franchises granted to each company now contained in the Brooklyn City Railroad Company are shown in separate colors, as stated on the map.

On each of these maps there is a memorandum attached, and I believe the maps and memoranda, including statements of mileage and of value of tangible property in streets, based on cost of reproduction new, allowing for depreciation, in each case to be true and correct.

The maps, including memoranda on each, are offered and received in evidence and marked "Exhibits B 1 to B 10," inclusive, respectively, as follows:

The following is a copy of the memorandum attached to the map, "Exhibit No. B 1":

Heavy blue.....	Brooklyn City R. R. Co.
Heavy green.....	Grand St. & Newtown R. R. Co.
Heavy red.....	Brooklyn Crosstown R. R. Co., including former Greenpoint & Williamsburgh R. R. Co., Nassau R. R. Co. and Brooklyn City, Hunter's Point & Prospect Park R. R. Co.
Heavy yellow.....	Bushwick R. R. Co.
Heavy brown.....	New Williamsburgh & Flatbush R. R. Co., including former Williamsburgh & Flatbush R. R. Co.
Dotted blue.....	Greenpoint & Lorimer St. R. R. Co.
Dotted green.....	Calvary Cemetery, Greenpoint & Brooklyn R. R. Co.

Dotted red..... South Brooklyn Street R. R. Co.
Heavy black..... Brooklyn, Bergen Beach & Canarsie R. R. Co.

Map No. B 2 shows all the separate special franchises granted to the Brooklyn City Railroad Company alone, not including its merged companies.

49 The following is a copy of the memorandum attached to the map "Exhibit No. B 2":

	Mileage measured as single track.	Value of tangible property.
HEAVY BLUE.—Original route of B. C. R. R. Co., as authorized by res. C. C., Dec. 19, 1853. (Offered in evidence and marked Exhibit No. 21 C.) Furman St., from Fulton St. to Atlantic Ave.; Columbia St., from Atlantic Ave. to Sackett St.; Hamilton Ave., from ferry to 3d Ave.; Court St., from Fulton St. to Hamilton Ave.; Fulton St., from ferry to Manhattan crossing; 3d Ave. (formerly Powers St.), from Flatbush Ave. to city line (60th St.); Flatbush Ave., from Fulton St. to city line (Malbone St.); Myrtle Ave., from Fulton St. to Broadway; Sands St., from Fulton St. to Navy St.; Navy St. and Hudson Ave., bet. Sands St. and Flushing Ave.; Flushing Ave., bet. Hudson Ave. and Broadway; Nassau St., from Hudson Ave. to Navy St.; Kent Ave. and Franklin St., bet. Classon Ave. and Commercial St.; Commercial St., from Franklin St. to Manhattan Ave.; Johnson St., from Fulton St. to Washington St., with modification as to Hamiton Ave., by res. C. C., Nov. 20, 1854. (Offered in evidence and marked Exhibit No. 22 C)	50.917	$567,065 90
HEAVY RED.—Connections of existing routes and extensions acquired by res. C. C., Jan. 16, 1860. (Offered in evidence and marked Exhibit No. 23 C.) Sackett St., bet. Columbia St. and Hamilton ferry; Washington Ave., bet. Flushing and Kent Aves.; Classon Ave., bet. Myrtle and Kent Aves.	2.346	35,606 89
HEAVY GREEN.—Extension on Graham Ave., bet. Driggs Ave. and Flushing Ave., required by res. C. C. July 16, 1866. (Offered in evidence and marked Exhibit No. 24 C), and extension on Greene and Gates Aves., bet. Fulton St. and Broadway, required by same resolution and by amendment of Oct. 15, 1866. (Offered in evidence and marked Exhibit No. 25 C), supplemented by res. C. C. July 20, 1868. (Offered in evidence and marked Exhibit No. 26 C)	8.912	84,587 55
HEAVY YELLOW.—Extension on Putnam Ave., bet. Fulton St. and Nostrand Ave., and on Halsey St., bet. Nostrand Ave. and Broadway, authorized by chap. 171, Laws of 1872. (Offered in evidence and marked Exhibit No. 27 C)	4.930	36,581 40
50 HEAVY BROWN.—Extension on Myrtle Ave., from Broadway to Bushwick Ave., by res. C. C. May 20, 1878. (Offered in evidence and marked Exhibit No. 28 C)	.303	2,730 07

	Mileage measured as single track.	Value of tangible property.
BROKEN GREEN.—Extension on Gates Ave., from Broadway to Myrtle Ave., by res. C. C. Apr. 4, 1881. (Offered in evidence and marked Exhibit No. 14 C)	1.723	23,476 01
BROKEN BLUE.—Extension along old plank road and Flatbush Ave., from city line (Malbone St.) to Kings highway, by chap. 370, Laws 1854. (Offered in evidence and marked Exhibit No. 29 C), and by chap. 392, Laws 1860. (Offered in evidence and marked Exhibit No. 30 C)	7.178	66,671 94
HATCHED BLUE.—Extension on 3d Ave. to Fort Hamilton by res. of the supervisor- and commissioners of highways of the town of New Utrecht June 5, 1877, with permission to use electricity, Nov. 1, 1890. (Offered in evidence and marked Exhibit No. 31 C)	4.744	37,596 50
HEAVY BLACK.—Extension on Flushing Ave., from Graham Ave. to Bushwick Ave., and from Knickerbocker Ave. to city line, by res. C. C. July 1, 1889. (Offered in evidence and marked Exhibit No. 32 C)	1.633	14,426 65
BROKEN YELLOW.—Extension on 2d Ave., bet. 60th St. and 65th St., 65th St., bet. 2d and 3d Aves., Bay Ridge Ave., bet. 3d Ave. and 13th Ave., 13th Ave., bet. Bay Ridge Ave. and 86th St., 86th St., bet. 13th Ave. and town line (23d Ave.), bet. New Utrecht and Gravesend by res. of supervisors and commissioners of highways of town of New Utrecht No. 1, 1890. (Offered in evidence and Marked Exhibit No. 31 C)	8.582	80,420 12
DOUBLE BLACK.—Extension on 86th St., bet. 23d and 25th Aves., and on 25th Ave., from 86th St. to Ulmer park, by res. of highway commissioners of town of Gravesend, 1891. (Offered in evidence and marked Exhibit No. 33 C)	1.913	14,278 51
BROKEN BLACK.—Grant on Wyckoff Ave. and Willow St., by res. highway commissioners of town of New Lots, Aug. 3, 1885. (Offered in evidence and marked Exhibit No. 34 C)	1.774	20,795 88
51 HATCHED GREEN.—Extension on Rockwell Pl., bet. Willoughby and Fulton Sts. Halsey St., bet. Broadway and Irving Pl. Throop Ave., bet. Park Ave. and Floyd St. Nassau Ave. and Varick St., bet. Manhattan and Meeker Aves., by res. C. C. June 19, 1893. (Offered in evidence and marked Exhibit No. 18 C)	3.599	19,454 54
HATCHED BLACK.—Extension on Vernon Ave. to Holy Cross cemetery by res. of highway commissioners of town of Flatbush, Feb. 16, 1894. (Offered in evidence and marked Exhibit No. 35 C)	.644	2,349 23
HATCHED BROWN.—Extension on Nostrand Ave., from Malbone St. to boundary line bet. Flatbush and Flatlands (Ave. E) by res. of highway commissioners of town of Flatbush, Dec. 16, 1893. (Offered in evidence and marked Exhibit No. 36 C), and extension on Ave. C from Flatbush Ave. to Coney Island Ave. by res. of same commissioners Feb. 5, 1894. (Offered in evidence and marked Ex. No. 37 C)	5.233	36,037 55

	Mileage measured as single track.	Value of tangible property.
TRIPLE GREEN.—Extension on Flatbush Ave., from Kings highway to Ave. N, and on Nostrand Ave., from line bet. Flatbush and Flatlands to Flatbush Ave. by res. of highway commissioners Feb. 5, 1894. (Offered in evidence and marked Exhibit No. 37 C)..	1.212	9,510 57
HATCHED YELLOW.—Extension on Myrtle Ave., from city line to town line, bet. Newtown and Jamaica, by res. of highway commissioners and supervisors of town of *town of* Newtown, Apr. 30, 1891. (Offered in evidence and marked Exhibit No. 38 C)	6.371	63,573 71
HATCHED RED.—Extension on Myrtle Ave. from boundary line bet. Newtown and Jamaica plank road, res. of town board of Jamaica, Nov. 6, 1891. (Offered in evidence and marked Exhibit No. 39 C)..	1.628	15,594 68
BROKEN RED.—Extension bet. Newtown and village of Flushing under res. of highway com. of town of Flushing, Mar. 31, 1894, amended Apr. 8, 1896. (Offered in evidence and marked Exhibit No. 40 C)	1.671	11,269 82
52 TRIPLE RED.—Extension in village of Flushing by res. of trustees, October 30, 1894. (Offered in evidence and marked Exhibit No. 41 C) and res. amendatory thereof and supplementary thereto.....	1.682	10,965 71
TRIPLE BLUE.—Extension on Fresh Pond road, from Lutheran Cemetery line to Grand St. by res. highway commissioners of town of Newtown, Oct. 31, 1893. (Offered in evidence and marked Exhibit No. 42 C)	2.322	18,684 76
TRIPLE BROWN.—Extension on Flushing Ave., from city line to Grand St. by res. of highway commissioners and supervisor- of town of Newtown, Oct. 26, 1889. (Offered in evidence and marked Exhibit No. 43 C)	2.833	25,739 66
RED AND BLUE.—Extension in town of Newtown by res. of highway commissioners Dec. 19, 1892. (Offered in evidence and marked Exhibit No. 44 C)	.728	55,127 47
In addition to these there are tracks on Box street, bet. Manhattan Ave. and Commercial St., authorized by res. of common council adopted Feb. 10, 1890, and Dec. 11, 1893. (Offered in evidence and marked Exhibits Nos. 45 C, 46 C) used for access to car barn, and tracks on 58th St. bet. 2d and 3d Aves. used for same purpose, all marked in HEAVY BLUE...	.....	.....
Totals.....	131.932	$1,252,545 18

The WITNESS: I have here map No. B 3, showing the special franchises constructed of the Grand Street and Newtown Railroad Company.

53 The following is a copy of the memorandum attached to the map No. B 3:

	Mileage measured as single track.	Value of tangible property.
HEAVY BLUE.—Franchises on Grand St., from First St. (Kent Ave.) to Bushwick Ave., granted by ch. 462, Laws 1860 (offered in evidence and marked Exhibit No. 47 C)	2.845	$31,089 58
HATCHED BLUE.—Extension on Meeker Ave., from Humboldt St. to Newton Creek, and on Humboldt St. bet. Meeker Ave. and Grand St., by ch. 199, Laws 1862 (offered in evidence and marked Exhibit No. 48 C) and general law	2.929	11,203 11
BROKEN BLUE.—Extension on Grand St., from Bushwich Ave. to Metropolitan Ave., by ch. 746, Laws 1870 (offered in evidence and marked Exhibit No. 49 C)	.992	10,079 17
HEAVY GREEN.—Extension through Grand St., from Metropolitan Ave. to city line, by res. C. C., May 22, 1876 (offered in evidence and marked Exhibit No. 50 C)	.984	9,776 43
BROKEN GREEN.—Extension in town of Newtown, on Grand St. to Broadway, under general law, confirmed by supreme court, and by action of highway commissioners of the town of Newtown, 1876 (offered in evidence and marked Exhibit No. 51 C)	6.200	58,882 50
Totals	13.950	$121,030 79

I have also map No. B 4, showing the special franchises constructed of the Brooklyn Crosstown Railroad Company, including the former Greenpoint and Williamsburgh Railroad Company, the Nassau Railroad Company, and the Brooklyn City, Hunter's Point and Prospect Park Railroad Company. The statement on the map shows the authority for each franchise and each franchise is separately colored.

Plaintiff's counsel offered the map in evidence.

Received and marked "Exhibit No. B 4, July 25, 1901—J. M. R."

54 The following is a copy of the memoranda attached to the map No. B 4:

	Mileage measured as single track.	Value of tangible property.
HEAVY RED.—Franchises on Manhattan Ave., bet. Newtown creek and Driggs Ave.; on Driggs Ave., bet. Manhattan Ave. and Broadway, with privileges to put side track at foot of Broadway west of Dunham Pl., ch. 323, Laws 1864. (Offered in evidence and marked Exhibit No. 52 C)	3.804	$36,275 14
HEAVY BLACK.—Franchises on Vernon Ave., bet. Borden Ave. and Newton creek; on Bedford Ave., from Manhattan Ave. to Broadway: on Washington Ave., bet. Flushing and Myrtle Aves.; on Park Ave., bet. Washington and Navy Sts.; Navy St. and Raymond St., bet. Park Ave. and Willoughby St., Willoughby St., bet. Raymond St. and Joralemon St.; Joralemon St., bet. Willoughby St. and Court St., by ch. 823, Laws 1866. (Offered in evidence and marked Exhibit No. 2 C)	5.396	50,200 15
HATCHED BLACK.—Franchises granted on Columbia St., bet. Sackett St. and Woodhull St.; on Woodhull St., bet. Columbia St. and Hamilton Ave., and on Richards St., bet. Hamilton Ave. and Elizabeth (now Beard) St., by ch. 574, Laws 1874. (Offered in evidence and marked Exhibit No. 53 C) and by res. C. C. adopted June 8, 1874. (Offered in evidence and marked Exhibit 54 C)	1.875	18,102 28
HEAVY BLUE.—Extension on Vanderbilt Ave., from Park Ave. to Myrtle Ave., by ch. 605, Laws 1870. (Offered in evidence and marked Exhibit No. 55 C)	.398	2,967 29
Totals	11.473	$107,544 86

I have also map No. B 5, on which are placed the special franchises constructed of the New Williamsburgh and Flatbush Railroad Company, formerly the Williamsburgh and Flatbush Railroad Company. The separate franchise is shown in blue on that map.

55 The following is a copy of the memorandum attached to the map No. B 5:

	Mileage measured as single track.	Value of tangible property.
HEAVY BLUE.—Franchise granted on Driggs Ave., from Broadway to Division Ave.; on Division Ave., bet. Driggs Ave. and Clymer St.; on Lee Ave., bet. Division Ave. and Nostrand Ave.; on Nostrand Ave., bet. Lee Ave. and Malbone St., by ch. 771, Laws 1866 (offered in evidence and marked Exhibit No. 1 C), and by res. C. C. Jan. 8, 1872 (offered in evidence and marked Exhibit No. 56 C), and extension on Malbone St., bet. Nostrand Ave. and Flatbush Ave., by provision of general law.		
Clove road, bet. Church Ave. and Holy Cross Cem. Granted by town board of town of Flatbush (offered in evidence and marked Exhibit No. 57 C)	8.396	74,341 36

I have also map No. B 6, showing the special franchises constructed of the Bushwick Railroad Company, with the same information as to the authority of the franchises.

The following is a copy of the memorandum attached to the map No. B 6:

	Mileage measured as single track.	Value of tangible property.
HEAVY BLUE.—Original franchises granted to J. Whittlesey & Son by res. C. C. M'ch 26, 1860 (offered in evidence and marked Exhibit No. 58 C), Apr. 30, 1860 (offered in evidence and marked Exhibit No. 59 C), Dec. 17, 1866 (offered in evidence and marked Exhibit No. 60 C), on South 4th St., bet. Bedford Ave. and Union Ave.; Meserole St., bet. Union Ave. and Bushwick Ave.; Bushwick Ave., from Meserole St. to Myrtle Ave.	4.509	$39,658 02
56 HEAVY GREEN.—Extension on Tompkins Ave., etc., by res. C. C. M'ch 30, 1868 (offered in evidence and marked Exhibit No. 3 C), M'ch 10, 1879 (offered in evidence and marked Exhibit No. 61 C); Roebling St., from Broadway to Division Ave.; Division Ave., from Roebling St. to Harrison Ave.; Harrison Ave., from Division Ave. to Tompkins Ave.; Tompkins Ave., from Harrison Ave. to Fulton St.; Kingston Ave., from Fulton St. to Douglas St. .	6.182	59,787 62

	Mileage measured as single track.	Value of tangible property.
HEAVY BROWN.—Extension authorized by res. C. C. Nov. 7 and 10, 1873 (offered in evidence and marked Exhibit No. 62 C), part of consecutive route covering lines of other companies); on Van Cott Ave. (now Driggs Ave.), from Graham Ave. to Manhattan Ave.; Greenpoint Ave., from Manhattan Ave. to Ferry	1.114	10,045 51
HEAVY RED.—Extension granted by ch. 582, Laws 1874 (offered in evidence and marked Exhibit No. 63 C); on Myrtle Ave., from Bushwick Ave. to city line	2.538	28,352 84
HEAVY YELLOW.—Extension granted by res. C. C. Feb. 26, 1885 (offered in evidence and marked Exhibit No. 15 C); Flushing Ave., from Bushwick Ave. to Knickerbocker Ave.; Knickerbocker Ave., from Flushing Ave. to Myrtle Ave	2.544	20,434 32
HEAVY BLACK.—Extension on Cypress Hills Plank road, from Ridgewood to Cypress Hills Cemetery, on Plank Road property, or by virtue of franchises granted to Broadway R. R. Co. by ch. 461, Laws 1860 (offered in evidence and marked Exhibit No. 64 C), and assigned by that company to the Bushwick R. R. Co. and by consent of highway commissioners	2.642	18,243 22
Total	19,529	$175,521 53

57 I have also map No. B 7, showing the special franchises constructed of the Greenpoint and Lorimer Street Railroad Company, with similar information.

The following is a copy of the memorandum attached to the map No. B 7:

	Mileage measured as single track.	Value of tangible property.
HEAVY BROWN.—Franchises granted by res. C. C., M'ch 9, 1885 (offered in evidence and marked Exhibit No. 17 C), on Meserole Ave., from Franklin St. to Manhattan Ave.; Nassau Ave., from Manhattan Ave. to Lorimer St.; Lorimer St., from Nassau Ave. to Broadway; Gwinnott St., from Broadway to Lee Ave.	4.220	$34,749 70

Also map No. B 8 shows special franchises constructed of the Calvary Cemetery, Greenpoint and Brooklyn Railroad Company, with similar information.

The following is a copy of the memorandum attached to the map No. B 8:

	Mileage measured as single track.	Value of tangible property.
Heavy Black.—Franchises granted by res. C. C., Apr. 13, 1885 (offered in evidence and marked Exhibit No. 65 C); on Greenpoint Ave., from Manhattan Ave. to Newtown creek; Union Ave., from Driggs Ave. to Broadway, Troop Ave., from Broadway to Park Ave.; Box St., from Manhattan Ave. to Oakland St	4.568	$32,237 02
Heavy Red.—Franchises granted by res. C. C. of Long Island City, Dec. 15, 1885 (offered in evidence and marked Exhibit No. 66 C); on Greenpoint Ave., from Newtown creek to Calvary cemetery	.826	2,758 35
Totals	5.394	$34,995 37

58 I have also map No. B 9, showing special franchises constructed of the South Brooklyn Street Railroad Company, with similar information.

The following is a copy of the memorandum attached to the map No. B 9:

	Mileage measured as single track.	Value of tangible property.
Heavy Blue.—Franchises granted by res. C. C. July 11, 1887; (offered in evidence and marked Exhibit No. 67 C); on 39th St., bet. 2nd and 3rd Aves.; 2nd Ave., from 39th St. to city line (60th St.); 52nd St., bet. 2nd and 3rd Aves	2.600	$45,582 53

I have here map No. B 10, which shows the special franchises constructed by virtue of grants to the Brooklyn, Bergen Beach and Canarsie Railroad Company.

The following is a copy of the memorandum attached to the map "Exhibit No. B 10:"

	Mileage measured as single track.	Value of tangible property.
HEAVY BLUE.—Franchises granted by highway commissioners of town of Flatlands. Offered in evidence and marked Exhibit No. —) on Ave. N, from Flatbush Ave. to Island Ave., Island Ave., from Ave. N to Ave. U, Ave. U, from Island Ave. to E. 76th St., E. 76th St., from Ave. U to Ave. Y.....	4.162	$36,275 78

59 These forty-five different special franchises, as will be seen from the maps, are disassociated from other franchises of the same companies, and connection between the different franchises of the same company in many cases is only made by use of the special franchise of other companies, either at present in the Brooklyn City Railroad Company system or of companies outside of the Brooklyn City Railroad Company system. Taken separately and without such right of connection, many of them are of no value. For instance, as shown by map No. B 9, the franchise of the South Brooklyn Street Railroad Company consists of a stretch of track on Second avenue, between Thirty-ninth street and Sixtieth street, with a spur running from Second avenue to Third avenue, on Fifty-second street, and a spur on Thirty-ninth street, from Second to Third avenue. That special franchise by itself is worthless, and the road has not been operated, except spasmodically, during a number of years. The franchises of the Calvary Cemetery, Greenpoint and Brooklyn Railroad Company are two in number and are separated by something more than a mile of track, as shown on map No. B 8. The special franchises are part of the consecutive route, in order to operate which it is necessary to secure rights from other railroad companies. By themselves those special franchises have no earning capacity to justify construction. The special franchise on Greenpoint avenue extends from Manhattan avenue to Calvary cemetery. Manhattan avenue is about half a mile from Greenpoint ferries, and without access to those ferries the revenue of the line would be very small and would not pay operating expenses. The portion of the special franchises on Union and Throop avenues, between Driggs avenue and Park avenue, is also a part of a route which includes the lines of other companies. By itself the revenue received from that special franchise would not pay operating expenses. As to the franchise on Greenpoint avenue, the entire receipts, including the more valuable stretch of track from Manhattan avenue
60 to Greenpoint ferry on Greenpoint avenue, which is not a part of the special franchise of the Calvary Cemetery, Greenpoint and Brooklyn Railroad Company, but is owned by another

company, and the right to run over which was leased by the Calvary Cemetery, Greenpoint and Brooklyn Railroad Company—the entire earnings of that line for the year ending June 30, 1900, were only $2,900, which was at the rate of eleven cents per car mile, an unprofitable rate. This would not pay operating expenses, to say nothing of interest on construction.

The special franchise of the Greenpoint and Lorimer Street Railroad Company, as shown by map No. B 7, consisted of three disassociated small stretches of track, which by themselves are of no value, except for scrap. It is only by use of these special franchises in connection with special franchises of other railroads that any use whatever can be made of them. The company never operated separately its special franchises, but upon construction immediately leased them to the New Williamsburgh and Flatbush Railroad Company.

The special franchises of the Bushwick Railroad Company, as shown on map No. B 6, are also separated into four stretches of track. Only two of them could be operated independently, and the others have no westerly terminus, except over the tracks of other railroad companies, namely, on Broadway at Broadway ferry. By no westerly terminus I mean no westerly terminus where there is any centre of population. The portion comprised in black, including the Cypress Hill line, earned for the year ending June 30, 1900, only $10,620, which is at the rate of thirteen cents per car mile, a rate which does not pay operating expenses, with any allowance for depreciation.

The special franchises shown on map No. B 5 of the New Williamsburgh and Flatbush Railroad Company are of value chiefly in connection with other special franchises of other railroad com-
61 panies, and at the northerly terminus ends abruptly at Broadway, it being necessary to use tracks of the Broadway Railroad Company in order to obtain access to Broadway ferry.

The special franchises of the Brooklyn Crosstown Railroad Company, shown by map No. B 4, included four separate franchises This route, operated as it is upon the tracks of other companies, is one of the most profitable routes in the Brooklyn City railroad system, but the special franchise belonging to the Brooklyn Crosstown Railroad Company consists of three different stretches of track in three different parts of the city separated by several miles from each other. They are only of value as used in connection with the tracks of other railroad companies.

The special franchises of the Grand Street and Newtown Railroad Company are five in number, as shown by map No. B 3, and only one of them, when operated by itself, would be a profitable line.

The separate franchises of the Brooklyn City Railroad Company, as shown by map No. B 2, are many of them widely separated, and could not be operated in connection with the original routes of the Brooklyn City Railroad Company except by the use of the tracks of other companies. Many of these special franchises granted to the Brooklyn City Railroad Company are in suburban communities

and are unprofitable in operation. For instance, the special franchise on Myrtle avenue, between Ridgewood and Jamaica avenues, did not earn for the year ending June 30, 1900, but $16,000, which is at the rate of ten cents per car mile, and is less than the expense of operation, to say nothing of interest on construction.

Q. Can you locate Ridgewood?

A. About the intersection of Myrtle and Wyckoff avenues. Those portions of the routes of the Brooklyn City Railroad Company
62 in the old towns of New Utrecht and Gravesend, the towns of Flatbush, Flatlands and Newtown are also unprofitable.

Of these special franchises on map No. B 2 the only special franchises which would admit of profitable operation in the year 1899 or 1900 were the original franchises of the Brooklyn City Railroad Company, shown in heavy blue on map No. B 2, and comprising approximately 50 miles of track measured as single track out of a total of about 202 miles measured as single track, comprising all of the present Brooklyn City railroad system, on which the assessment of $9,487,629 is based. This makes an assessment on the profitable mileage at about $200,000 per mile of single track, whereas the value of the tangible property included in the special franchises on those 50 miles of single track is about $10,000 per mile. Of these franchises, the portion on Furman street, between Fulton street and Atlantic avenue, does not yield enough revenue to pay the wages of conductors and motormen, to say nothing of other expenses. It is the combination of the different franchises granted to the Brooklyn City Railroad Company and to those constituent companies which are now a part of the Brooklyn City Railroad Company with each other that have given the routes an earning capacity.

The special franchise assessment, as fixed by the State board, although not by the local board, as finally entered in their tax books, is $1,879,445 for the borough of Queens. That is an assessment upon 38.351 miles, measured as single track, or at the rate of $49,006 per mile. The value of the tangible property is $7,800 per mile as reported. This special franchise assessment in the borough of Queens is nearly $3,000 per mile in excess of the special franchise assessment in the borough of Brooklyn. The tracks in the borough of Queens go through a sparsely settled community, and I can state absolutely are positively unprofitable. They do not pay operating expenses and interest on the cost of construction.
63 When I say that I speak of everything in the borough of Queens.

The special franchise of the Brooklyn, Bergen Beach and Canarsie Railroad Company on Avenue N, Island avenue, East Seventy-sixth street and Avenue U, being a continuation of the Flatbush Avenue line of the Brooklyn City Railroad Company, consists of about three miles of track and is entirely disassociated from the remainder of the Bro-klyn City railroad system. By itself it has no earning capacity and it is only in connection with the routes of the Bro-klyn City railroad system that it is made a profitable operation. It runs through a suburban territory, and the only time of the year

when it has any revenue sufficient to justify operation is during the months of June, July, August and September.

Over the entire line of the Brooklyn City Railroad Company on Myrtle avenue and on Fulton street and over that portion of the Third Avenue line between Thirty-eighth and Sixty-seventh streets are elevated railroads. There is also an elevated railroad on Lexington avenue, between Grand avenue and Broadway, which runs parallel within two blocks of the Gates Avenue line of the Brooklyn City railroad.

The special franchises of the Nassau Electric Railroad Company and constituent companies run on parallel and adjacent streets to the routes of the Brooklyn City Railroad Company, and in some cases the franchises of those companies authorize the use of the tracks of the Brooklyn City Railroad Company. The Brooklyn City and Newtown Railroad Company, by special act passed prior to 1874, has the right to operate its cars on Fulton street in the most profitable section of the city for car operation, between De Kalb avenue and Washington street. That company is not a part of the Brooklyn rapid transit system, but is a competing company.

64 Cross-examination:

The Brooklyn City railroad is a part of the Brooklyn rapid transit system. It has this different position from most of the other companies operated by the Brooklyn Heights Railroad Company as lessee, namely, that none of the stock of the Brooklyn City Railroad Company is owned by the Brooklyn Rapid Transit Company. The total capital stock of the Brooklyn City Railroad Company is $12,000,000 par value. By the terms of the lease a 10 per cent. dividend is practically guaranteed by the Brooklyn Heights Railroad Company for 999 years from February 14, 1893.

Q. What was that stock worth in January, 1900?

Objected to as immaterial. Objection overruled. Exception.

A. I don't recall the market price; about $230 or $240. Recently it has been from $237 to $239.

Q. What was the value of the capital stock of the Brooklyn City Railroad Company on January 7, 1900? Was it the aggregate value of the share stock in each case? In other words, was it the multiple of the number of shares and value of each share in each case? This question is directed to the value of the capital stock as a total as distinguished, so far as any distinction exists, from the value of the share stock, so-called.

This inquiry is intended to ascertain the actual value of the entire assets of the company of every nature other than bonded indebtedness on the date named.

Objected to as immaterial, improper and too indefinite and complicated to admit of an intelligent answer.

Objection overruled. Exception.

A. I do not think I understand the question, and I am unable to answer it.

65 The market values of the Brooklyn City Railroad Company stock are referred to on page 7 of the report of that company for October 30, 1899. You will find, if you turn to the report of that company, the first report that was required by the State Board of Tax Commissioners, that on page 7, the market values of both the stock and bonds are sworn to by the secretary of that road, Mr. Swin.

Q. What we would like to have is the value three months later, at the actual day of the assessment?

A. I don't think the value changed as to those securities; the stock is a more or less stable stock; it doesn't fluctuate more than ten or twenty points in a year, and the bonds, of course, are a good deal more stable. He does not give in that report the market values of some of the bonds of the constituent companies of the Brooklyn City Railroad Company. Those aggregate in par value $925,000, and they are distributed over several kinds of issues; they represent different mortgages; only comparatively few are outstanding under each mortgage, and they are in the strong boxes of investors, and there is no opportunity to determine any market value of those bonds. I haven't heard of a sale of one of them in several years. They are worth par, and not much above par, because the time of maturity is rapidly approaching, and when that time arrives they can be paid off, of course, at par. The total amount of outstanding bonded indebtedness of the Brooklyn City Railroad Company is $6,925,000, bearing interest at 5, 4½, 6, and, I think, in one case, 7 per cent.; that includes all the bonded indebtedness of the constituent companies of the Brooklyn City Railroad Company.

Q. What were those bonds worth, on an average?

A. Varying prices; the bonds of the Brooklyn City Railroad Company, amounting to $6,000,000 par value, were quoted at about 115; the bonds of the other companies, amounting to $925,000, were inactive, and I can't give any market price. Of this $6,925,000

66 the Brooklyn Rapid Transit Company held in its guaranteed fund $1,627,000 par value, Brooklyn City first consolidated mortgage bonds.

(Abstracts of all of these underlying mortgages offered and received in evidence, marked "Exhibit 68 C.")

Q. There are no stocks of any of the constituent companies that form the Brooklyn City Company?

A. No.

Q. Those companies were consolidated and the corporations, as such, disappeared from existence in the consolidation?

A. Yes.

Q. All the securities of the constituent companies of the Brooklyn City left outstanding are the bonds secured by the mortgages given by the constituent companies on different pieces of the Brooklyn City property before the final consolidation in the present Brooklyn

City road, amounting in the aggregate to $925,000.

—. That leaves as stock outstanding only the stock of the Brooklyn City Railroad Company.

Q. In January, 1900, what was the value of the real property of the Brooklyn City Railroad Company outside the streets, not including the special franchises? I refer to the real property not included in the special franchises, private right-of-way, real estate, powerhouses, car barns, etc.

A. I can't give that information without putting the various figures together.

Objected to as immaterial. Objection overruled. Exception.

A. The assessed valuation for the year 1900 was about $2,584,000. I should think that represented about 65 per cent. of the real value, or 60 per cent. I have no separate statement of the value of personal property the company owned.

67 Q. The Brooklyn City Company was the owner of how many special franchises?

A. The Brooklyn City Company was the owner of forty-five special franchises, shown on the maps in detail.

Q. In your evidence you have referred to the several roads which are now owned by the Brooklyn City Company. Were those the result of consolidation or purchase, or what way were they acquired?

A. They were all, with the exception of the small franchise of the Brooklyn, Bergen Beach and Canarsie Railroad Company merged in the Brooklyn City Railroad Company; all except the South Brooklyn Street Railroad Company, on October 31, 1890, and the South Brooklyn Street Railroad Company on July 12, 1892. I don't know whether new stock or new bonds were issued in exchange for the old stock, or whether new securities, including stock, were sold and the proceeds used for the acquisition of the stock of the constituent companies, or whether the Brooklyn City Railroad Company paid for those stocks out of earnings, but it became possessed of all the stocks of these constituent companies and merged them under the provisions of the general law. I cannot give the figures as to each of the companies, the capital stock of each of the companies, and what was given or exchanged for the capital stock of each of the companies.

Q. Is there any way of ascertaining what the earnings during the year were of any one of these roads on the track included as originally—the property of any one of these roads as distinguished from the whole Brooklyn City system?

A. Not absolutely; it can be figured approximately, but where cars run over different routes it is difficult to know exactly what proportion of the earnings come from each separate franchise, but in some cases that can be figured quite approximately.

Q. Which one of the roads constituting this system earned a surplus during that year?

A. All of these roads were operated as one system; have
68 been so operated since their merger. We don't keep books

as to the earnings of the different roads which were consolidated in the Brooklyn City. The corporate organization of all the constituent companies is no longer maintained; only that of the Brooklyn City Railroad Company.

Q. What is the first company on your list?

A. Brooklyn City Railroad Company.

Q. Is this one of the companies which you have spoken of as practically valueless considered by itself; was there originally a Brooklyn City before this consolidation?

A. Yes; some of the franchises, in fact, all of the franchises except the original franchises shown on map No. B 2, are valueless operated separately and independently.

Q. Have they ever been so operated?

A. You are speaking now only of the franchise of the Brooklyn City Railroad Company—some of them have. The original franchise of the Brooklyn City Railroad Company, shown in the heavy blue line on map No. B 2, was operated separately during the first, perhaps, dozen years of the company's history—from 1854 to about 1866. I don't know whether during that period they were operated at a profit or a loss.

Q. Are there any other special franchises of that road that have been operated independently?

A. Yes; the special franchise on Myrtle avenue, from Wyckoff avenue to Richmond hill, from the time of its construction, which, I think, was about 1893, until, I think, about 1900; I am not quite sure about that. They were operated separately to the extent that the cars that were run over that line were not run over the line of other franchises.

Q. When I speak of being operated separately I mean that the cars running over this particular franchise run over no other routes, and the cars of no other company run over this route; is that what you mean by it?

A. Yes; it was an unprofitable operation and always has been, because the territory is a sparsely settled territory, and there
69 are not people enough along the route to warrant the construction and operation of a railroad, and there is no excursion terminal point which brings large numbers of people to the route.

Q. As now operated, is it profitable?

A. It is not.

Q. Which ones of these thirteen roads that entered into this consolidation are now operated at a profit or were at this period?

A. The entire system is operated at a profit when operated jointly, but separately the only franchises which are operated at a profit are the original franchises of the Brooklyn City Railroad Company, shown in blue on map B 2. I mean that all the other franchises operated by themselves, not in connection with other routes, are absolutely unprofitable. They are to the extent that we are able to ascertain by the fares collected upon these routes.

By the REFEREE:

Q. It comes to this, that the profits of this consolidated system are really all made upon the original Brooklyn City franchise?

A. You are speaking only of the Brooklyn City?

Q. Yes?

A. Yes, sir; certainly.

By Mr. COMAN:

Q. Are these other franchises of value to the system as feeders?

A. They are prospectively; chiefly prospectively: the company has extended its lines into the suburbs very liberally, and far ahead of the demands for transportation facilities in those suburbs. I have spoken of several franchises belonging to a single road which are separated from each other. That situation exists on the Brooklyn City Railroad Company line, as shown on map B 2, the franchise on Flushing avenue, from Knickerbocker avenue to the city line, between Brooklyn and Newtown: the special franchise
70 on Flushing avenue, from the boundary line between Brooklyn and Newtown to Grand street, in Newtown; the special franchise on what is called the Fresh Pond road, between the Lutheran Cemetery line and Grand street, and on other lines; those three belonged originally to the Brooklyn City Railroad Company. Those are entirely separate and disconnected from any other special franchise of the Brooklyn City Railroad Company. They are connected with the present system of the Brooklyn City by the special franchises of other constituent companies which are now in the Brooklyn City Railroad Company. That is true of every one of the special franchises of which I have spoken on my direct examination to the extent that I have described each. I think there are no exceptions.

Q. What is the cost of operating one of these roads per car mile?

A. Depends entirely upon the road; generally speaking, the cost is about 15 cents per car mile. That would be a fair figure for our whole system. Generally speaking, where the mileage is great the unit of cost is lower. The longer the line the less cost per car mile, as a rule. There are other considerations that enter into the expense. Where frequent operation is justified by the conditions of traffic the car mileage is greater and the unit is likely to be lower; it has the same effect where a line is long, the car mileage is determinable and not the mileage of track. The total expenses are divided by the car mileage. If the line is long and high speed is possible, time becomes the essential factor, and if you can make more trips for a day's work the per car mile cost is less.

By Mr. FIERO:

Q. You say that where the demand for frequent operation is greater it lessens the cost, why is that?

A. Let me explain; if on a track ten miles long through a

sparsely-settled community you can make high speed, if you are paying by the trip, as we do, you can make more trips for a
71 day's work, that is, your mileage would be greater, but your expense would be the same for conductors and motormen. On the other hand, your expenses for power would be increased, the expense for maintenance or equipment would be increased, your expense for accidents would be increased, your expense for maintenance of track would be increased, but the larger your car mileage into the sum of expenses the lower will be your car mile rate.

Q. The other side of the proposition, that where there is a demand for frequent operation in thickly-settled parts of the town?

A. It has the same effect with this qualification, that in those communities you make more frequent trips, but your speed is much slower. That means we keep our men at work all the while. The rate of speed is not so great; time is really the factor which determines economy. I was merely explaining, how, with very frequent service on a thickly-settled route your mileage increases and your car mile rate decreases. If you didn't run so much service on those routes and ran at the same rate of speed the car mile rate would be higher. Just a question of your dividend and divisor.

By Mr. COMAN: The Brooklyn City does not own any franchises that are not operated and never have been, that are constructed.

Q. Franchises not constructed, that is, where no tracks have ever been laid?

A. Yes.

Q. Can you give us the length of those?

Objected to as immaterial and irrelevant.

Objection sustained. Exception.

The WITNESS: There are some constructed franchises not operated.

(The REFEREE:)

Q. Not assessed?

A. They are assessed.

72 The Brooklyn Heights Railroad Company has a lease of the railroads and railroad property of the Brooklyn City Railroad Company, made in 1893 for the term of 999 years, and has since 1893 operated such railroads as lessee; and since 1898 has operated all the railroads and railroad property of the Brooklyn, Queens County and Suburban Railroad Company, as lessee thereof, until July 1, 1901; and has operated all the railroads and railroad property of the Coney Island and Gravesend Railway Company from April 1, 1899, until July 1, 1900, as sublessee thereof; all of the foregoing lessor railroads being domestic street railroad corporations owning street railroads in the former city and present borough of Brooklyn. The Kings County Elevated Railroad Company was merged into the Brooklyn Union Elevated Railroad Company in about May, 1900, and after October 1, 1899, the Brooklyn Heights Railroad Company

operated, as lessee thereof, all the railroads and railroad property of the Kings County Elevated Railroad Company until its merger as aforesaid, and after such merger operated, as lessee, all of the elevated railroads of the Brooklyn Union Elevated Railroad Company, being all of the elevated railroads in the former city and present borough of Brooklyn.

I am vice-president of the Brooklyn Heights Railroad Company and also vice-president of the Brooklyn Rapid Transit Company.

Q. For what purpose was the Brooklyn Rapid Transit Company organized, as stated in its articles of incorporation?

Objected to as immaterial; objection overruled; exception.

—. The Brooklyn Rapid Transit Company was incorporated under the business corporation law of this State in January, 1896, for the purposes of constructing railroads, furnishing supplies to railroad corporations and owning stocks and bonds of railroad corporations, and other similar purposes. It does not own or operate any railroads.

73 Q. State in which of the companies concerning which these various proceedings have been instituted, in the cases where Sheehan & Collin are attorneys, the Brooklyn Rapid Transit Company owns stock, or a controlling interest?

All the evidence on this subject is taken under same objection, ruling and exception.

A. The Brooklyn Rapid Transit Company owns a controlling interest in the stock of the Brooklyn Heights Railroad Company; Brooklyn, Queens County and Suburban Railroad Company; the Brooklyn Union Elevated Railroad Company; the Nassau Electric Railroad Company, and of the Kings County Elevated Railroad Company, prior to its merger into the Brooklyn Union Elevated Company.

The Brooklyn Rapid Transit Company acquired, on the foreclosure sale and reorganization of the Long Island Traction Company, the property formerly owned by the last-named company, which also was a business corporation, but incorporated under the laws of West Virginia for purposes similar to those of the Brooklyn Rapid Transit Company. Among the properties thus acquired by Rapid Transit Company were all of the stock of the Brooklyn Heights Railroad Company, except one share owned by each of the directors thereof; all of the stock of the Brooklyn, Queens County and Suburban Railroad Company, except one share owned by each of the directors thereof, and since then, and prior to January 1, 1900, the Brooklyn Rapid Transit Company became the owner of upwards of 90 per cent. of the capital stock of the Nassau Electric Railroad Company and upwards of 90 per cent. of the capital stock of the Brooklyn Union Elevated Railroad Company, and since has been the owner of such capital stock.

The railroad companies whose capital stock is thus owned by the Brooklyn Rapid Transit Company, or whose railroads are
74 leased to the Brooklyn Heights Railroad Company, are known as the Brooklyn Rapid Transit system of companies.

Direct examination (resumed):

At the time the Brooklyn Rapid Transit Company acquired the stock of these companies, namely, the Brooklyn Union Elevated Railroad Company, the Kings County Elevated Railroad Company, the Nassau Railroad Company, the Sea Beach Railway Company, the former Brighton Beach Railway Company, each of those companies had just emerged from foreclosure or reorganization proceedings, and it was on the basis of their reduced fixed charges effected by reorganization that the Brooklyn Rapid Transit Company acquired them. The operating accounts of these companies showed the Brooklyn Rapid Transit Company acquired the stock of these railroad companies by the issue of its own stock in almost all cases in exchange for the stock of the railroad companies. About $40,000,000 of the stock of these constituent companies, about which I have given testimony, were exchanged for about $25,000,000 of Brooklyn Rapid Transit stock, which meant that about $15,000,000 of the capitalization of these companies was retired. The Brooklyn Rapid Transit Company has been incorporated since January, 1896. It has never paid any dividends.

By the REFEREE:

Q. To use a common expression, it was scaled down $15,000,000?
A. Yes; just the stock. The bonds, prior to the absorption by the Brooklyn Rapid Transit system, were scaled down about $5,000,000 and the annual fixed charges were scaled down $650,000.

After paying operating expenses and fixed charges, these companies all showed deficits, otherwise there wouldn't have been any reorganization. The foreclosures and reorganizations I
75 refer to were because of the inability of the corporations to pay their indebtedness.

All of the railroad companies of the Brooklyn rapid transit system made their reports to the State Board of Tax Commissioners during the year 1899 on the theory that the Brooklyn Heights Company, being the lessee company, would be assessed for the special franchises of all companies whose railroads were operated by it as such lessee.

All of the reports and supplemental reports made by the Brooklyn rapid transit system of companies to the State Board of Tax Commissioners prior to the assessment of the special franchises of said companies are offered and received in evidence, marked "Exhibits 4 H, 4 C, 4 N, 4 B, 4 K, and Exhibit A annexed to the return herein, *ante*, p. 22, respectively, certain portions thereof being abstracted, as indicated, instead of being set out in full.

It is conceded that all such reports and supplemental reports were before the State Board of Tax Commissioners prior to and at the time of their making the assessments of the special franchises of the said companies for and during the year 1900, and that no reply was made by the State board to the written request for information. *Exhibit B, annexed to the return, ante, p. 26.*

I have maps indicating the different special franchises of the different railroad companies constituting the Brooklyn rapid transit system of companies, as shown by marks on said maps. Said maps are offered and received in evidence and marked "Exhibits A, B, C, D, E, F," respectively.

Contracts were made in or about the year 1897 between the trustees of the New York and Brooklyn Bridge and the Brooklyn Heights Railroad Company in its own behalf and in behalf of the Brooklyn City Railroad Company as lessee of the railroads
76 of the latter company, the Nassau Electric Railroad Company, the Brooklyn Elevated Railroad Company, the predecessor of the Brooklyn Union Elevated Railroad Company, and the Kings County Elevated Railway Company, and the Brooklyn City and Newtown Railroad and Coney Island and Brooklyn Railway Companies, which last two companies are not a part of the Brooklyn rapid transit system of companies, for crossing the New York and Brooklyn bridge.

All of these contracts are offered and received in evidence, and abstracts thereof are hereby annexed, marked "Exhibits 5 H, 5 N, 5 B, 5 K, 1 B, C and N, 1 C, I and B."

Cross-examination by Mr. FIERO (resumed):

Q. Your attention is called to the fact that the report of some of the constituent companies, particularly the Nassau Electric, gives no facts in regard to the property in the street, or cost of reproduction, or any of the matters which were inquired of; that is to say, there is a general statement made by the Brooklyn Heights, but no detailed statement of these constituent companies which are separately assessed?

A. The reason for that is, as you will recall, when the blanks were first sent out they were accompanied by an opinion which I think was written by you, suggesting that in the case of lessor and lessee companies, the lessee company, which was obligated to pay the tax, should make the report, and on that the lessee company, the Brooklyn Heights Railroad Company, did make the report; but subsequently by letter our value of the tangible property was distributed among the various companies at the request of the State board, and that is not only in evidence, but the direct testimony has been even more specific as to the value of the tangible property included in each franchise, not only separately for each company, but also separately for each special franchise.

Q. There is some question in regard to the gross earnings of these different companies; that is, as to each company which is

77 separately assessed and its operating expenses. Upon what basis would you make that estimate, upon mileage, or how would you arrive at it?

A. We have a statement of earnings by lines, and those lines, as a rule, are the lines which existed under independent management of each company, but in many cases lines have been merged and the earnings represent the earnings from more than one company, sometimes three or four companies. Just how I am going to determine what part of those earnings is to be attributed to each company I can't now see. When it comes to the expenses it is going to be a good deal more difficult matter. Take the element of accident cases, for instance, those are not distributed according to lines, and it is impossible to apportion the expense thereof between the various companies.

Q. I find here inquiry as to the amount realized by the Brooklyn Heights Railroad Company, as lessee, from the operation of the Brooklyn City after paying operating expenses and amount guaranteed by the lease; can you give that either accurately or approximately?

A. I can't give that accurately, and I should dislike to give it approximately, because it would be merely a guess. The tracks of the Brooklyn City Railroad Company are mostly in the centre of the city, and the tracks are used in connection with tracks of other companies and private rights-of-way, and it is quite impossible to determine just what part of the earnings of the Brooklyn Heights Railroad Company, as lessee, come from those particular tracks. Of course, we could make a guess at it, but it would only be a guess.

Q. Is that the fact with regard to all the corporations that are separately assessed?

A. To a greater or lesser extent. Some of the companies, like the elevated, are more distinct, and it is easier to get the earnings that are attributable to that business, and yet I can't separate the earnings of the Brooklyn Union from the earnings of the Kings County, there being two assessments, one against the former company and one against the latter. At the New York end of the bridge tickets
78 are sold which are good on either of the elevated lines and also on the surface lines. Where those tickets are used it is not possible always to determine. Those tickets are dropped in the box and you can't tell which route the person takes. Even there, there is a good deal of guess about it.

Q. Now, in relation to Schedule G, page 8, of the Brooklyn City?

A. That is a cash statement; that would include any receipts which the Brooklyn City Railroad Company might get from the sale of real estate, and which under the terms of the lease to the Brooklyn Heights Railroad Company it is obliged to turn over to the Brooklyn Heights Railroad Company. I presume one of those items, $13,852, represents that kind of proceeds. The other item, $14,327, I assume refers to income of the Brooklyn City Railroad Company from the investment of a portion of its surplus.

Q. From what source is the item of Schedule D, accounts and bills receivable, $353,371.05?

A. I think that includes to a comparatively small extent some mortgages on real estate which it had sold, but payment in full for which had not been made at that time. To a considerably larger extent it represents the investment of the Brooklyn City Railroad Company surplus.

Q. Does any of it refer to any moneys which are due from any other one of the companies?

A. No; I think not.

Q. What do you mean by its referring to the investment of the surplus?

A. The Brooklyn City Railroad Company, as its balance sheet showed in the report of the State Board of Tax Commissioners, had a surplus of $342,000; that was an accumulated surplus of several years. There is some reason to believe that it never was an actual surplus, and that question is in litigation, but nevertheless they had the cash or securities on hand which represent it, and the $353,000 referred to includes that surplus investment.

79 Q. Do you find on page 6 charges on both sides of the account somewhere about four millions of dollars?

A. Yes.

Q. Explain what that is?

A. That is entered under cost of equipment, $4,729,000. That represents the Brooklyn City Railroad Company book statement of the cost of equipment from the beginning of the road substantially to the date of the lease to the Brooklyn Heights Railroad Company, in 1893.

Q. Where is that included in the other side of that balance sheet?

A. The capital stock and bonds issued; in other words, all the personal property of the Brooklyn City Railroad Company turned over to the Brooklyn Heights Railroad Company at the time of taking effect of the lease might have disappeared from sight, yet that book statement would appear on their books, because under the terms of the lease the Brooklyn Heights Railroad Company is bound to make the equipment good at the termination of the lease.

Direct examination resumed by Mr. COLLIN:

Q. Will you state the amount of taxes paid by and levied against the Brooklyn rapid transit system of companies during the year ending June 30, 1900?

Objected to as immaterial and irrelevant and not throwing any light on any question involved in this litigation.

Objection overruled. Exception.

A. During the year ending June 30, 1900, the companies of the Brooklyn rapid transit system paid directly in taxes the sum of $530,765, divided as follows:

80 *Taxes Paid by Brooklyn Rapid Transit and Constituent Companies in Year Ending June 30, 1900.*

	State franchise, etc.	Local, parcels of real estate.	Local, tracks and structure.	Local, licenses, etc.	Total.
Brooklyn Rapid Transit Co	$84,692 38				$84,692 38
Brooklyn Heights R. R. Co	115,885 10	$791 00	$471 00	$200 00	117,350 10
Brooklyn, Queens County and Suburban R. R. Co		1,328 00		1,800 00	6,128 00
Brooklyn City R. R. Co	21,909 00	43,445 00	974 00	55,000 00	121,013 00
Brooklyn Union Elevated R. R. Co		8,017 00	20,378 00	116,066 60	144,326 60
Nassau Electric R. R. Co		18,795 00	13,746 00	33,000 00	65,541 00
Prospect Park and Coney Island R. R. Co			12,240 00		12,240 00
Total	$201,577 48	$73,379 00	$47,809 00	$206,066 60	$530,703 48

Taxes Unpaid and in Litigation.

	Total.
Special franchise tax (all companies)	$553,999 60
Local real estate taxes (all companies)	20,264 79

The amounts in the first column, under the heading, "State franchises, etc.," represent the taxes paid directly to the State treasurer on assessments by the State comptroller, computed by percentages of appraised value of capital stock and percentages of earnings.

Indirectly, and solely on account of their special franchises, the companies paid in said year, approximately, $305,000 for paving, for carrying policemen and firemen free of charge and for furnishing electric lights in various public places and streets. These two sums of direct and indirect payments aggregate $835,765.48, but in addition there is in litigation the direct taxes imposed by chapter

81 712 of the Laws of 1899, and the act amendatory thereof, on special franchises, amounting to $553,999.60 and on local real estate outside of special franchises, $20,264.79, making a total payment for that year for taxes, if enforced, of $1,387,925.23. This amount is over 11 per cent. upon the gross receipts of all of said companies, and nearly 30 per cent. of the net receipts of all of the companies for that year, before deducting any interest whatever on cost of construction.

Cross-examination (resumed).

By Mr. Fiero:

The tax of $115,885.10 on the gross earnings, which was paid to the State, was paid by the operating company, the Brooklyn Heights Railroad Company, and while those earnings are obtained from the operation of the separate lines which have been assessed, it is impossible to distribute that tax accurately among the various com-

panies whose earnings contribute to make the gross earnings on which the tax is paid. Moreover, that gross earnings tax also applied to the earnings from railroads on private rights-of-way which comprised about one-fifth of our track mileage.

Q. You start out with the statement that you estimate the total amount of these taxes paid at one-fifth upon private right-of-way?

A. No, I say one-fifth of our total revenue mileage is represented by railroads on private rights-of-way, approximately one-fifth of the mileage. Whether those private rights-of-way contribute one-fifth of the earnings I am not prepared to say; it is a difficult matter to determine. For instance, most of those private rights-of-way lead to the shore resorts at Coney Island. The earnings on those rights-of-way are merely the fares collected on that half of the route, but whether other fares which are collected on the special franchises would be received if we didn't have these private rights-of-
82 way leading to the resorts, we can't arrive at it except approximately. We know generally the operation of those resorts brings us a good many new passengers from New York and elsewhere, who wouldn't ride at all on our lines if it wasn't for those private rights-of-way leading to the ocean. So if you are going to distribute on a mileage basis you might give too much credit to the suburban lines. At the same time the suburban lines, as I have explained, and especially those lines on private rights-of-way, do attract a great many passengers that we wouldn't get if it weren't for those private rights-of-way, so it is a difficult problem to compute just what parts of the gross earnings of the combined properties is attributable to those private rights-of-way; probably a very considerable portion of them should be thus attributed. So in this computation the gross earning tax paid by the Brooklyn Heights Railroad Company and credited entirely to that company, consist of $115,885.10 for that year. I have not undertaken to apportion that among the different companies, because it is impossible to do it with any such accuracy as the case demands.

Q. We would like the estimate made?

A. It needs an examination of about forty or fifty different lines, and I can't give it to you with any degree of accuracy. The gross tax, therefore, of the Brooklyn Heights Railroad Company, as nearly as it can be apportioned, giving it the credit of the entire $115,885 for that year, was $117,350. The difference between the total and the amount of gross earnings tax represents taxes on real estate, car licenses, etc. That is on the Brooklyn Heights Railroad Company itself. The Brooklyn, Queens County and Suburban Railroad Company paid a total of $6,128. In addition there was assessed against that company by the local assessors a tax on an assessment of $80,000 in the borough of Brooklyn and $132,800 in the borough of Queens. Those assessments are presumably on private rights-of-way and tracks not included in the special franchises and are being contested by the company.
83 There was no personal property assessment of that company. The litigation is upon the ground of inequality and excessive

valuation. The company does not claim that no part of this tax ought to be paid, because the claim is only for reduction. In addition, still, is the special franchise tax on a valuation of $1,304,553 in the borough of Brooklyn and $628,050 in the borough of Queens. I am giving the taxes actually paid during the year ending June 30, 1900, and the taxes of that year which are in litigation. That special franchise tax was payable the following October. That was for the preceding year. The taxes in New York are levied for the year that is past and not for the year that is to come. That would be the taxes that were levied, really, for the year 1900. The figures do not substantially vary on whatever date your year ends. For convenience sake we apportion our taxes according to the fiscal year which ends on June 30. The figures could be given for the year ending October 1 or December 31, but the gross amount would not substantially vary.

Q. What I have in mind is this: whether those taxes, put in the form in which you put them, do not include all the taxes that were levied for the previous year upon special franchises as well and, in addition, the special franchise tax for that year?

A. No. For instance, take the next company, the Brooklyn City Railroad; the taxes payable during that year ending June 30, 1900, or chargeable during that year, were the taxes actually paid and the taxes actually in litigation. Of that, $21,600 was a tax paid to the comptroller, a franchise tax on the capital stock—comptroller of the State. $43,445 of it were taxes on various parcels of real estate located in different parts of Brooklyn and Queens. $974 of it was a tax on tracks within the boroughs of Brooklyn and Queens, outside of the streets and outside of the special franchises; but a considerable part of the assessment on tracks outside of special
84 franchises was contested and therefore doesn't appear in the taxes paid during that year. The assessed value of the tracks outside of special franchises, which were contested, was $11,000 in the borough of Brooklyn and $14,000 in the borough of Manhattan. The Manhattan assessment was entirely illegal, because the company had no property there to assess; it was a mistake of the local assessors, on the theory that the terminal in New York was our property. Then there was $55,000 paid in bridge tolls, privilege of crossing the bridge, and car licenses, making a total of $121,000 in round numbers. About $13,000 for car licenses and $42,000 for bridge tolls. Still in addition is the special franchise tax for that year against the Brooklyn City Railroad Company, which is the tax on an assessment of $7,608,184 for the borough of Brooklyn and $1,879,445 for the borough of Queens. That is this tax that is now in litigation on this hearing. The Brooklyn Union Elevated Railroad Company paid in taxes on local parcels of real estate $8,017, on tracks and structure outside of special franchises $20,378, and in bridge tolls $116,000, making a total of $144,395, exclusive of the special franchise tax, which is the tax on the assessment of $5,197,033 for the Brooklyn Union lines and $2,036,063 for the Kings County line, now a part of the Brooklyn Union Elevated Railroad Com-

pany. The Nassau Electric Railroad Company paid during the year a tax of $65,541, represented by $18,795 tax on local real estate, $13,746 on tracks and structure outside of special franchises, $33,000 on bridge tolls and car licenses, and there is in litigation the special franchise assessment, amounting to $5,136,030. The Prospect Park and Coney Island Railroad Company has no special franchises, but the taxes paid by the Heights Company on the property actually leased was $12,240, a tax on tracks, real estate and structures.

The Brooklyn Rapid Transit Company paid $64,092 to the State as a franchise tax.

The Brooklyn Heights Railroad Company pays under sec-
85 tion 185 of the tax law and the Brooklyn Rapid Transit Company under section 182. That is a duplicate tax to this extent: If the Brooklyn Rapid Transit Company was a railroad corporation it would fall under section 185, and the tax on gross earnings would be the only tax which the combined properties would have to pay: it being a business corporation and not a railroad corporation, the Brooklyn Heights Railroad Company, which is the operating company, not only has to pay the percentage on its gross earnings, but the Brooklyn Rapid Transit Company has to pay on the comptroller's valuation of the capital stock, the capital stock representing the capital stocks of the various companies. So there is substantially double taxation there. The total taxes actually paid during that year were $530,765.48. The special franchise tax in litigation on all the companies amounts to $554,000, lacking a few cents, I believe. In addition, there were other taxes contested, amounting to $20,200—other assessments contested on which the taxes would amount to that. And still, in addition are the indirect taxes that are paid on account of the possession of special franchises; for instance, the amount paid in the repair and repaving of streets on which our tracks lie, the carrying of policemen and firemen free, the removal of snow and ice, the lighting of certain public streets and places which do not figure in our tax account, but are, nevertheless, a part of our operating expenses. Many of them have been imposed upon us since the franchises were granted by State legislation.

By Mr. COLLIN:

We have to pay, also, city inspectors for inspecting the pavement which we repair on the street; a very considerable amount, relatively. So that the total taxation, including the taxes in litigation, taxes paid and indirect taxes would amount to somewhere in the neighborhood of $1,300,000 or $1,400,000 in one year.

86 By Mr. FIERO:

By indirect taxes I mean those that I have now stated. The amount can be estimated with tolerable accuracy. I estimate the value of the indirect taxes at not less than $300,000. I think that is a conservative estimate. Some years it is considerably more than that.

By Mr. COLLIN:

In that I didn't include the paying of inspectors.

By Mr. FIERO:

Q. The taxes actually paid as taxes would be reduced by about $300,000, if you eliminate the indirect from the total of direct and indirect taxes.

By Mr. COLLIN:

The taxes that result from assessment of property, including the taxes in litigation and the taxes paid, aggregate a little over $1,100,000.

Q. Can you state how much larger the total taxes were during the year 1900, including the special franchise tax, than during the previous year when there was no special franchise tax?

A. In 1899 the local assessors assessed our tracks at a very high figure, and that assessment is now in litigation, and has been for three years, and the city has not yet put in its return to our certiorari proceeding. The best comparison is the local assessment for the year 1899 on track and structure comprised in what are now assessed and were the following year assessed as special franchises. The ordinary assessments on parcels of real estate remain the same. The State franchise tax, meaning by that the tax paid to the State comptroller under other franchise tax laws, remains substantially the same, but the tax on tracks and structure, increased by the special franchise tax law, is represented by an increase from about $13,975,000, the local assessors' valuation of all tracks, whether
87 in public streets and places or on private rights-of-ways, to nearly $24,000,000, which is the assessment of the State board for less than the same property.

Q. Isn't there any reduction anywhere upon the assessment which has been made so as to substantially or nearly equalize it?

A. I haven't heard yet of any. There is a difference of pretty nearly $10,000,000 in the valuation of the property. I think the tax rate for the year 1899 was somewhere in the neighborhood of 2.38, and for the next year 2.32, I think it was. It varied in the boroughs; the borough of Queens is different from the borough of Brooklyn. Except for these particular assessments, which I have referred to, the taxes don't substantially change from year to year. The tax on Brooklyn Rapid Transit capital stock changes according to the market value of the stock. Whether it was greater or less that year I don't recall. My computation indicates that the assessment has been increased about $10,000,000 by virtue of the special franchise assessment, and actually more than that because the special franchise assessment only includes the assessment on special franchises. The local assessment of $13,975,000 for the preceding year included also the assessment on the private rights-of-way, about a million dollars additional, I mean by that out of the $13,975,000 something over a million dollars represented assessment on private

rights-of-way, and that didn't include the Prospect Park and Coney Island railroad, which that year we didn't have. The local assessment of tracks, etc., which I refer to in 1899, is being contested principally on the ground of overvaluation.

Plaintiff's counsel read in evidence the following affidavit of E. C. Shaler, in pursuance of stipulation that it should be of the same force and effect as if he were present and testifying to the statements therein contained:

88 STATE OF NEW YORK, } 88:
County of Kings, }

E. C. Shaler, being duly sworn, deposes and says that he is an engineer employed in the engineering department of the Brooklyn Heights Railroad Company and has had upward of five years' experience in the construction of electric street railroads, and was, on the 1st day of July, 1899, familiar with the cost of material and labor necessary for such construction.

That he has carefully computed the cost of reproducing, on the 1st day of July, 1899, the various lines of the Brooklyn City Railroad Company described in the evidence of T. S. Williams, vice-president of the Brookly Heights Railroad Company, in the above-entitled proceeding.

That the figures in said evidence set opposite to the description of each of the several lines correctly state the cost, on the 1st day of July, 1899, of reproducing the said certain lines, less a reasonable allowance for depreciation, based upon the length of time during which such construction had been in place.

Deponent further says that the cost of the rails on a given piece of track is approximately 30 per cent. of the total cost of such construction, the balance of the cost being made up of the necessary ties, plates, labor, poles, wires, etc.

That the figures as given in the evidence hereinbefore described are based upon $27.36 per ton as the cost of steel rails, which was the actual cost in Brooklyn of steel rails on the 1st day of July, 1899.

Deponent further says that the actual cost of steel rails in Brooklyn on the 2d day of January, 1900, was $37.08 per ton, being an increase of 33 per cent. over the cost of steel rails in said exhibits.

89 That if the cost of reproduction is to be figured upon the second Monday of January, 1900, then 10 per cent. should be added to the cost of reproduction indicated in the aforesaid evidence.

E. C. SHALER.

Subscribed and sworn to before me this 31st day of July, 1901.

C. S. HIGHAM,
Commissioner of Deeds for the City of New York,
Residing in the Borough of Brooklyn.

TIMOTHY S. WILLIAMS, recalled for the plaintiff, testified:

Examined by Mr. COLLIN:

I was secretary and treasurer of the relator, The Brooklyn Heights Railroad Company, from the summer of 1895 until about February, 1900, and since then have been vice-president of the company; the Brooklyn Heights Railroad Company was incorporated April 1, 1887, under the general law, chapter 252 of the Laws of 1884, and obtained its franchise under the general laws of the State and the special laws, chapter 515 of the Laws of 1883, chapter 665 of the Laws of 1887 and the resolutions of the common council of the city of Brooklyn, adopted July 1, 1889, and the charter of the city of Brooklyn.

(The said special laws and resolutions are offered and received in evidence. Abstracts thereof are hereto annexed, marked "Exhibit 1 H.")

The sale was had in pursuance of those resolutions and the franchise was sold by the comptroller of the city of Brooklyn, on February 25, 1890, to the Brooklyn Heights Railroad Company; I have the certificate of the comptroller to that fact.

90 (The certificate is offered and received in evidence, and abstract thereof is hereto annexed, marked "Exhibit 2 H.")

(Subdivision 21 of section 49 of the Greater New York charter, chapter 378 of the Laws of 1897, and such other portions of the Greater New York charter and of other special laws, and of the charter and ordinances of the former city of Brooklyn and the present city of New York, as are deemed by the relator to be material to this litigation, are offered and received in evidence, and abstracts thereof are hereto annexed, marked "Exhibit 3 H," "6 H" and "7 H."

The tangible property included in the special franchise of the Brooklyn Heights Railroad Company consists of 0.733 of a mile, measured as single track, of cable railroad on Montague street, between Court street and Montague terrace, with a small portion of track, 0.086, measured as single track, with overhead electric construction on State street, between Furman street and Willow place, which is included in the same franchise. A provision of the resolution was that the company acquiring the franchise should have access to a power-house or car-barn adjacent, and under that authority this small bit of track was built. The company had to litigate to the court of appeals to retain that. The value of the tangible property included in said special franchise is $20,339.37. That is the present value based on cost of reproduction, allowing for depreciation of the tangible property in the streets; that amount is a hundred dollars less than the figure reported to the State Board of Tax Commissioners, the error being an error in addition in the computation made to the State board. The main franchise, the only part of the special franchise where passenger earnings are received, is the double-track railroad on Montague street, from Court street to

Montague terrace. The remaining portion of the special franchise is on State street, which is several blocks south, consisting of a
91 single track, and is used merely as a means of access to a car-barn, and no revenue is taken from that special franchise. Montague street is a *cul de sac* so far as a public street is concerned, and terminates at Montague terrace, where begins the declivity which proceeds on to Wall Street ferry. There is no access to Wall Street ferry from the westerly terminus of the special franchise at the brow of the hill where Montague terrace crosses except over private property, so that the railroad included in the special franchise on Montague street leads from Court street 0.733 of a mile, measured as a single track, and the railroad being mostly double track, is about half of that in length; the railroads included in this special franchise on Montague street and State street could not be operated separately at a profit; it would be at a considerable loss without the access to the Wall Street ferry over private property.

Q. This railroad on Montague street being cable road and no copper there, about what portion of the value you have stated would it be for scrap purposes?

Objected to as too remote and immaterial; objection overruled; exception.

A. That would depend upon the market value for scrap; it would be considerably less than the value of the tangible property as reported.

The assessment of the special franchise of the Brooklyn Heights Railroad Company is $78,311. The value of the tangible property included in the special franchise on June 30, 1899, was $20,339.37. The total assessment of the special franchise exceeds the value of the tangible property included in the special franchise by $57,971. Without the ferry connection over private property, from Montague terrace to Wall Street ferry, which is no part of the special franchise, and for which we pay revenue or rent, the earning capacity of the railroads included in the special franchise would not be suf-
92 ficient to justify the construction of a railroad, or the operation after construction, assuming the construction costs nothing.

Since about July 1, 1895, the railroad earning capacity has been increased by a transfer arrangement at Court street with through lines of railroad, whereby travel is facilitated between other parts of the city and Wall Street ferry. This transfer arrangement has increased the passenger earnings of the entire line of the Brooklyn Heights Railroad Company from Court street to Wall Street ferry about 55.9 per cent. The expenses have not materially increased, so that except for this increase of earnings the net earnings would be very small, even with the Wall Street Ferry connection, but without that the road would be decidedly unprofitable. The receipts from passenger operations for the entire line for the year ending June 30, 1899, were $47,185; for the same year the expenses, not including any interest on bonds, were $40,054; the net earnings,

without deducting any interest whatever on cost of construction, was $7,130. As showing the effect of the transfer arrangement with other railroad companies at Court street on the earning capacity of the entire line, I have here the earnings for the year immediately preceding that transfer arrangement; receipts from the passenger operation for the year ending June 30, 1895, which was immediately preceding the transfer arrangement, were $30,885, as against $47,185 for the year ending June 30, 1899; the expenses, not including any allowance for reconstruction or renewal, were $26,450 for that same year June 30, 1895.

I have figured the special franchise assessment per mile of railroad measured as single track, our valuation of the tangible property per mile measured as single track, and the amount of the assessment of the special franchise per mile of railroad measured as single track after deducting our valuation of the tangible property. I have compared those figures as they pertain to the special franchise of the Brooklyn Heights Railroad Company with similar figures for other street surface railroad companies in the borough of Brooklyn, with the following result:

93

Defendant's counsel objected to the result upon the ground there is no sufficient or proper basis of comparison; it doesn't appear the conditions are the same, earnings the same and the value of the use of the streets the same.

Objection overruled; exception.

The WITNESS: The following is the result:

	Special franchise assessment, per mile, single track.	Value of tangible property per mile.	Amount of special franchise assessment per mile, after deducting value of tangible property.
Brooklyn Heights railroad	$95,617 00	$24,956 00	$70,661 00
Brooklyn City railroad	46,486 00	9,697 00	36,789 00
Brooklyn, Queens County and Suburban railroad	46,943 00	7,178 00	39,765 00
Nassau Electric railroad	42,734 00	8,355 00	34,379 00

This franchise for the use of Montague street by this company is not limited to cable railroad construction. I think it gives us electric. We have not property-owners' consent for electrical construction. So we have not to-day, and this railroad company never has had the right complete to operate on Montague street by other motive power than cable, and it is operated only by cable, which is very much more expensive than electrical operation. I cannot give the proportion. It is very much more expensive than electricity,

especially because a separate powerhouse is required to maintain power for that small stretch of track operation, with separate engine, boiler, etc. Cable construction makes it impracticable to connect by through car service with any other street surface railroad. All the other railroads that could be connected with it are operated
94 by overhead electric trolley system, so that the car service on this Montague Street line for this 0.733 mile is absolutely limited to service on that line and the cars cannot be run on any other trackage, which is true also of the extension of this line over private property westerly from Montague Street terrace to Wall Street ferry, being operated by cable.

It is conceded that the State Board of Tax Commissioners did not include in their assessment of the special franchise of the Brooklyn Heights Railroad Company for the year 1900 any tangible property westerly of Montague terrace or any right to use any such property for railroad purposes, except the tangible property on State street, between Furman street and the power-house, No. 40 State street, and the right to use that portion of State street, and that there is no controversy in this litigation as to the portions of the streets in the city of Brooklyn in which the special franchises owned by the Brooklyn Heights Railroad Company are located.

Cross-examination.

By Mr. FIERO:

The amount of the bonds of the Brooklyn Heights Railroad Company is $250,000 and of stock $200,000. Those bonds are not guaranteed. The value of the tangible property included in special franchises is, in round numbers, $20,000. I haven't a separate enumeration of the value of the cars and equipment and personal property of the company. I think that is on record somewhere with your board, but I wouldn't say offhand, even in a general way. Omitting the accounts receivable and supplies on hand, I don't think it would exceed the value of the real estate; $40,000 would not be the value of the tangible real and of the personal; that wouldn't cover the value of the real estate. The real estate consisted of property on State street, car-barn and power-house; property on Furman street, and various parcels elsewhere. The assessed value of the Furman Street property, I think, was $5,000
95 and the State Street property $20,000; about $25,000 together. Other property of the Brooklyn Heights Railroad Company is personal property, some real estate up in the town of Flushing, some in another part of the city of Brooklyn, and the construction of tracks and terminal facilities at Wall street and over private property from Montague terrace to Wall Street ferry, and leases of the other lines. These leases I regard as having value, money value, but more particularly the Brooklyn Heights Railroad Company has accounts with those various lessor companies for construction advances amounting to a great many hundred thousand dollars more than the par value of the capital stock and bonds. Those companies

owe the Brooklyn Heights Railroad Company for construction advances not payable in some cases for a long time ahead; 999 years in some cases; those are assets of the company.

Q. They go to make up the $250,000 of capital in any way?

A. I don't know what portion of the capital of the company was used in its original arrangement for the lease of railroads of the Brooklyn City Railroad Company. I was not familiar with the affairs of the company at that time.

Q. The $250,000 of bonds, what were they used for; what do they represent, what value?

A. I couldn't answer that question; I was not familiar with the affairs of the company at that time.

Q. I would like in some way to get at the assets of the Brooklyn Heights Railroad Company, what that $250,000 of bonds has got back of it?

A. They have got back of them—they are secured by a mortgage on all the property of the Brooklyn Heights Railroad Company. That property consists of the special franchise which has been assessed, consists of the tracks, special work, turnouts, and so on outside of the special franchise; it consists of various parcels of real estate, power-house and car-barn on State street, house on
96 Furman street, vacant lots in the former towns of Flatbush and Flatlands, vacant lots in the town of Flushing; it has among its assets a great many accounts receivable, which is shown in its reports; they are covered by this mortgage; these assets include book accounts shown on page 6 of the original report, and materials and supplies, $152,370, on hand for the operation and construction of railroads; those are part of the assets. I don't think the bonds and stock were issued until about the time of the Brooklyn City lease, as I recall it. The stock was, but the bonds were not. I think, on June 30, 1899, the company had accounts and bills receivable, $147,820; cash on hand, $437,553; and Brooklyn City Railroad construction account, $4,764,048.

Q. The cost of real estate and improvements appears to be $458,932; according to this statement the value of your tangible property included in special franchises is about $20,000; what relation do those figures bear to each other; how is it in your assets you put this cost of real estate improvements, $458,000; what does that represent?

A. That represents the book account of expenditures for real estate and improvements, including both special franchise and what is outside of special franchise from the time of the incorporation of the company, April 1, 1887.

Q. Did the company construct any other railroad; how is it there is a difference of $438,000 between the cost of real estate and improvements and its actual value?

A. The actual value of about $20,000 which I have given here is merely the actual value of the tangible property included in the special franchise; my valuation of two parcels of other real estate

was $25,000; what the cost was I don't know; the entire real estate would not make up anywhere near $458,000.

Q. Would it make up $58,000?

A. As to the original cost I can't answer; that was before I was connected with the company. Those figures are the original
97 cost, not the present value, that is, the cost as I find it on the books of the company. My first connection with the company was in the year 1895.

Q. You can't give any reason why the cost of real estate and improvements is carried at $458,932, while the actual value of the real estate and improvements, as you have given, is a comparatively smaller figure?

A. I do not know the considerations which entered into the minds of the officers of the company at the time those transactions were had.

Direct examination by Mr. COLLIN (resumed):

It may be true that real estate may have disappeared by fire or otherwise, and then reconstruction would appear in this cost. All such items of reconstruction might appear in the total cost, while the value would be value as they now appear; so that the cost of real estate and improvements during a period of years on the books inevitably would be greater, that is, ordinarily I would expect it to be much greater than the present value of the tangible property as it now stands. In reference to all of those companies with which I am connected, in many cases it is true there have been reconstructions where the property has been made all over again, and a new issue of bonds for that purpose, for instance, reconstructing from horse-power to electricity, and the cost has been repeated over again in reconstruction; for instance, take the horse railroads as they stood before conversion into electricity, the conversion of electricity required an entire new construction of the track; so the old trackage and old cars were practically thrown away, to a great extent; and yet the present value as it now stands is represented only by the cost of the last reconstruction.

Cross-examination by Mr. FIERO (resumed):

The other real property of the company, not included in its special franchises on January 7, 1900, is as follows: Power-house on
98 State street; lot at the corner of Nostrand and Flatbush avenues; lots at Bergen beach; vacant lots at Ocean parkway and Avenue E. The above property was assessed in the year 1900 at $34,260, which was in reasonable and about the usual proportion to its actual value; also the tracks on private property westerly of Montague terrace, which was assessed with the property of the owner of the lands and not to this company. The value of such railroad tracks and structure on January 7, 1900, was about $8,000, estimated on the same basis on which the tangible property included in the special franchises has been estimated; also lot in Flushing assessed

at $200; this real estate account dates back to the beginning of the company's incorporation and the opening of its books in 1887. My recollection is that these charges, which you refer to, date back from the time of the beginning of the company, I presume, shortly after 1887, not the beginning of operation as a railroad; it didn't begin the operation of its railroad until along — 1891 or 1890. The books are in my possession. The books show as to the original construction a gross sum paid to a construction company in stocks and bonds. I don't recall the amount, and the details entering into the original cost are all in the possession of the construction company. We have no record of that ourselves. I don't recall the name of the construction company.

Q. With regard to transfers—you say the value of this property was increased by the use of transfers—how do you arrive at the income under this transfer system; is the Brooklyn Heights Company given credit for that, the passengers it carries?

A. The Brooklyn Heights Railroad Company, not being connected with any other railroad company by through service, it is very easy to keep the passenger receipts from that railroad separately, and it is done.

Q. That is the amount which is paid on that road, but when transfers are made to the road is any credit given to that road?

A. All the cash receipts which that railroad takes in are
99 credited to that road; no provision is made with reference to the transfers; a great many thousand people are carried free and they don't appear on our books at all; no revenue is received from that; all that goes on the books is the money actually received from passengers on that line; that line is a feeder, coming from Wall Street ferry to our other roads. To a very considerable extent, money that is paid on the railroad owned by the Brooklyn Heights Railroad Company represents, to a large extent, fares which are free on other railroads, and *vice versa;* it is about half and half, but the increase which I refer to is shown by the receipts immediately before the transfer arrangement went into effect, and immediately after. My recollection is that the rental paid for the private property in the neighborhood of Wall Street ferry is $2,000 per year. The actual terminus of this road is the Wall Street ferry, which is one of the smaller ferries over to Manhattan; the business of that ferry is not very large; it does not run Sundays, holidays or at night after 9 o'clock.

Q. State the market value and actual value of stock and bonds of the Brooklyn Heights Railroad Company on the second Monday of January, 1900?

Objected to as immaterial and improper.

The REFEREE: If he can answer the question he may. If he knows what the actual value is he may give it.

Mr. FIERO: We will take the same statement as we did in the

Metropolitan, that the actual value was the value upon which it sold the second Monday of January.

The same objection is made to the entire line of evidence as to the value of stocks and bonds. Objection overruled. Exception. All of the evidence as to value of stock and bonds is taken subject to same objection, ruling and exception.

All the stock of the Brooklyn Heights Railroad Company,
100 except the shares qualifying directors, thirteen shares, is owned by the Brooklyn Rapid Transit Company. There are no sales of that stock, except as directors change, and the outgoing director sells his stock to the incoming director, and the price is a nominal one of about $100 per share. I think that stock is worth about par. It is certainly worth par.

Q. What was the value of the capital stock of the Brooklyn Heights Railroad Company on January 7, 1900? Was it the aggregate value of the share stock in each case? In other words, was it the multiple of the number of shares and value of each share in each case? This question is directed to the value of the capital stock as a total as distinguished, so far as any distinction exists, from the value of the share stock, so-called.

This inquiry is intended to ascertain the actual value of the entire assets of the company of every nature other than bonded indebtedness on the date named.

Objected to as immaterial, improper and too complicated to admit of an intelligent answer.

Objection overruled; exception.

A. I do not think I understand the question, and I am unable to answer it.

The bonds are very inactive, there being only $250,000 of them in par value outstanding, and they were selling at something above par, but the sales are very few, and what would be considered a fair market value I am unable to state. The rate of interest is five per cent. The value would be something above par. They run until, I think, 1930. I am not sure as to that. They are somewhat above par whenever they are sold, but how much I don't know.

The bonds are secured by a mortgage on the Brooklyn Heights Railroad property originally owned, before it acquired the lease of the Brooklyn City, and by the leases of the other roads leased
101 by the Brooklyn Heights Company by virtue of the clause as to after-acquired property. So that the only physical property the mortgage conveys is the physical railroad property of the Brooklyn Heights Company, its real estate, and all personal property, which amounts to very much more than the par value of the bonds, but that personal property consists of cash and accounts receivable and equipment and similar property which might be disposed of from time to time. The bonds are worth something above par.

The interest is paid on those bonds from the general receipts of

the Brooklyn Heights Railroad Company, from the operation of its own railroad and of the railroads of the lessor companies. The income of the Brooklyn Heights Railroad Company is sufficient to pay such interest, and, as a matter of fact, it is paid out of the income of the Brooklyn Heights Company. I think the bonds ought to be worth in the neighborhood of 108 or 110.

Plaintiff's counsel read in evidence the following affidavit of E. C. Shaler, in pursuance of stipulation that it should be of the same force and effect as if the witness were present and testifying to statements therein contained.

STATE OF NEW YORK, }
County of Kings, } ss.:

E. C. Shaler, being, duly sworn, deposes and says that he is an engineer employed in the engineering department of the Brooklyn Heights Railroad Company, and has had upward of five years' experience in the construction of electric street railroads, and was, on the 1st day of July, 1899, familiar with the cost of material and labor necessary for such construction.

That he has carefully computed the cost of reproducing, on the 1st day of July, 1899, the various lines of the Brooklyn Heights
102 Railroad Company described in the evidence of T. S. Williams, vice-president of the Brooklyn Heights Railroad Company in the above-entitled proceeding.

That the figures in said evidence set opposite to the description of each of the several lines correctly state the cost, on the 1st day of July, 1899, of reproducing the said certain lines, less a reasonable allowance for depreciation, based upon the length of time during which such construction had been in place.

Deponent further says that the cost of the rails on a given piece of track is approximately 80 per cent. of the total cost of such construction, the balance of the cost being made up of the necessary ties, plates, labor, poles, wires, etc.

That the figures as given upon the evidence hereinbefore described are based upon $27.36 per ton as the cost of steel rails, which was the actual cost in Brooklyn of steel rails on the 1st day of July, 1899.

Deponent further says that the actual cost of steel rails in Brooklyn on the 2d day of January, 1900, was $37.08 per ton, being an increase of 33 per cent. over the cost of steel rails in said evidence.

That if the cost of reproduction is to be figured upon the second Monday of January, 1900, then 10 per cent. should be added to the cost of reproduction indicated in the aforesaid testimony.

E. C. SHALER.

Subscribed and sworn to before me this 31st day of July, 1901.

C. F. HIGHAM,
Commissioner of Deeds for the City of New York,
Residing in the Borough of Brooklyn.

103 TIMOTHY S. WILLIAMS, recalled for the plaintiff, testified:

Examined by Mr. COLLIN:

I am vice-president of the Brooklyn, Queens County and Suburban Railroad Company, and have been for about a year. Before that I was secretary and treasurer for about five years. The Brooklyn, Queens County and Suburban Railroad Company was incorporated in January, 1894, and almost immediately thereafter it was consolidated with the Brooklyn and Jamaica Road Company, the Broadway Railroad Company and the Broadway Ferry and Metropolitan Avenue Railroad Company under the general law.

The special franchises of the Brooklyn, Queens County and Suburban Railroad Company are therefore such as were constructed by the constituent companies, with the exception of the Brooklyn and Jamaica Road Company, whose line was on a private right-of-way and which had no special franchise. The tangible property of that line was not included in this assessment against the Brooklyn, Queens County and Suburban Company, as I understand, but it has been separately assessed by the local assessors in New York on the theory it was not a special franchise within the meaning of the tax law, and the taxes are assessed by the local authorities. The Brooklyn, Queens County and Suburban Railroad Company did not directly acquire any franchise to construct, maintain and operate in the streets any of its railroads which have been constructed and operated in the streets, but they were acquired through the constituent companies which were consolidated into that company.

The special franchise assessments made by the State board which are under consideration here were for the borough of Brooklyn, $1,304,553, and for the borough of Queens, $628,050, and were so certified by the State board to the railroad company, but
104 whether they were so certified to the local board of taxes and assessments I do not know. As shown on the books of the department of taxes and assessments of the city of New York, there was no assessment of any special franchise of this company in or for the borough of Queens; the two assessments for both boroughs as made by the State board were lumped in one assessment for the borough of Brooklyn on the books of the local assessors at the total amount of $1,932,603. The railroads of this company are located in both boroughs and were so reported to the State board.

I have a map here marked "C," which shows the various special franchises of the Brooklyn, Queens County and Suburban Railroad Company, as existing at the time of this assessment, in different colors, which show the special franchises of the Broadway Railroad Company, with its various extensions, and the special franchises of the Broadway Ferry and Metropolitan Avenue Railroad Company. The original special franchises of the Broadway Railroad Company are shown in the heavy blue line. The hatched blue line shows the extensions of the Broadway Railroad Company through the town of New Lots. The heavy green line shows the extensions of the

Broadway Railroad Company on Reid avenue, under special act, chapter 788 of the Laws of 1873. (This special act offered and received in evidence, and abstract thereof hereto annexed, marked "Exhibit 1 S.") The short heavy block line shows the extensions of the same railroad company on Utica avenue, by resolution of the common council, July 8, 1878. (These resolutions offered and received in evidence, and abstract thereof hereto annexed, marked "Exhibit 2 S." The broken heavy green line shows the special franchise of the Broadway Railroad Company under extensions granted on Utica avenue by resolutions of the common council July 17 and 24, 1893. (These resolutions offered and received in evidence, and abstract thereof hereto annexed, marked "Exhibit 3 S.")

105 The yellow line shows the special franchise granted originally to the Bushwick Railroad Company by resolutions of the common council October 18, 1875. (These resolutions offered and received in evidence, and abstract thereof hereto annexed, marked "Exhibit 5 S.") The franchises on Yates avenue, which is now Sumner avenue, and on Troy avenue, granted by the same resolutions, were assigned by the Bushwick Railroad Company to the Yates Avenue and Flatbush Avenue Railroad Company, which was subsequently consolidated under general law with the Broadway Railroad Company, and the consolidation was confirmed by special act, chapters 480 and 481 of the Laws of 1883. (This special act offered and received in evidence, and abstract thereof hereto annexed, marked "Exhibit 6 S.") The original franchise of the Broadway Railway Company was granted by special act, chapter 303 of the Laws of 1858. (This special act offered and received in evidence, and abstract thereof hereto annexed, marked "Exhibit 7 S.") Its original franchise was extended by chapter 222 of the Laws of 1861. (This special act offered and received in evidence, and abstract thereof hereto annexed, marked "Exhibit 8 S.") Incidentally a franchise for a double track on a very small portion of the route, namely, on Alabama avenue, between Broadway and Atlantic avenue, was granted by resolution of the common council of the city of Brooklyn, passed July 17, 1893. (Abstract of the resolution hereto annexed, marked "Exhibit 3 S.") That is about two or three ordinary city blocks in length. By resolution of the common council of the city of Brooklyn, July 17, 1893, the Broadway Railroad Company was authorized to change its motive power to electricity over its various routes. (This resolution offered and received in evidence, and abstract thereof hereto annexed, marked "Exhibit 3 S.") Various acts of the legislature and resolutions of the common council have given other grants which affect, directly or indirectly,

106 the rights of the Broadway Railroad Company in the special franchises which have been assessed. (All of such acts and resolutions were offered and received in evidence, as follows: Resolutions of the common council of Brooklyn, passed March 26, 1860, abstract of which is hereto annexed, marked "Exhibit 1 N." Resolutions of the common council, passed April 16, 1860, abstract of which is hereto annexed, marked "Exhibit 2 N." Resolutions of

the common council, passed April 30, 1860, abstract of which is hereto annexed, marked "Exhibit 3 N." Resolutions of the common council, passed December 17, 1866, abstract of which is hereto annexed, marked "Exhibit 13 N." Resolutions of the common council, passed September 23, 1867, abstract of which is hereto annexed, marked "Exhibit 6 N." Chapter 322 of the Laws of 1864, abstract of which is hereto annexed, marked "Exhibit 7 N." Resolution of the common council, adopted January 25, 1864, and amendment of, February 8, 1864, abstract of which is hereto annexed, marked "Exhibit 9 S." Chapter 248 of the Laws of 1864, granting to the Brooklyn City and Ridgewood Railroad Company the right to construct and operate a single or double track on Broadway, between East New York at the city line and Gates avenue, abstract of which is hereto annexed, marked "Exhibit 10 S." Chapter 771 of the Laws of 1866, authorizing the Williamsburgh and Flatbush Railroad Company to construct and operate a railroad on South Seventh street (now Broadway), between First street (now Kent avenue) and Fifth street (now Driggs avenue), abstract of which is hereto annexed, marked "Exhibit 1 C." Chapter 823 of the Laws of 1866, authorizing the Nassau Railroad Company to construct double track railroad on Broadway, between Driggs avenue and Kent avenue, via Broadway and Rush street, abstract of which is hereto annexed, marked "Exhibit 2 C." Resolution of the common council, passed March 2, 1868, authorizing the South Side Railroad Company to construct single track horse railroad on Broadway, between Johnson avenue and South Eighth street;
107 also between what was then the terminus of Broadway and Kent avenue, on South Seventh street (now Broadway), abstract of which is hereto annexed, marked "Exhibit 11 S." Resolution of the common council, March 30, 1868, giving consent to the Bushwich Railway Company to construct and operate tracks on Broadway, between what is now Bedford avenue and Roebling street, abstract of which is hereto annexed, marked "Exhibit 3 C." Resolution of the common council, September 14, 1868, giving the Greenpoint and Williamsburgh Railroad Company rights on Broadway, between what is now Kent avenue and Driggs avenue, abstract of which is hereto annexed, marked "Exhibit 5 C." Resolution of the common council, December 27, 1869, authorizing and directing the Brooklyn City, Hunter's Point and Prospect Park Railroad Company to operate their cars along Broadway to First street, and along First street to Kent avenue, from South Seventh street to the intersection of Washington avenue, and which applies to that portion of the present Broadway between Driggs avenue and Kent avenue, abstract of which is hereto annexed, marked "Exhibit 6 C." Resolution of the common council, passed August 23, 1869, relating to the standing of cars at the foot of Broadway, abstract of which is hereto annexed, marked "Exhibit 7 C." Resolution of the common council, passed December 27, 1869, giving rights to the Brooklyn Crosstown Railroad Company on Broadway, abstract of which is hereto annexed, marked "Exhibit 8 C." Resolution of the

common council, passed December 19, 1870, authorizing the Bushwick Railroad Company to construct and operate double tracks on Broadway, between Jefferson street and Reid avenue, abstract of which is hereto annexed, marked "Exhibit 9 C." Chapter 622, Laws of 1871, authorizing the Brooklyn, Winfield and Newtown Railway Company to construct and operate tracks on Broadway, between Union and Myrtle avenues, abstract of which is
108 hereto annexed, marked "Exhibit 10 C." Chapter 705 of the Laws of 1872, authorizing the Brooklyn, Winfield and Newtown Railway Company to construct and operate a railroad on Broadway, from Eighth street (now Marcy avenue) to First street (now Kent avenue), abstract of which is hereto annexed, marked "Exhibit 11 C." Chapter 863 of the Laws of 1872, authorizing the South Side Railroad Company of Long Island to operate its road from Bushwick avenue and Montrose avenue to the East river, and to use steam dummies on a portion of Broadway, abstract of which is hereto annexed, marked "Exhibit 12 S." Chapter 585 of the Laws of 1874, chapter 422 of the Laws of 1875 and chapter 539 of the Laws of 1885, granting to the Brooklyn Elevated Silent Safety Railway Company and its successors the right to build and operate an elevated railway on Broadway, from Marion street to Fulton avenue, in East New York, abstracts of which are hereto annexed, marked "Exhibits 1 B; 2 B; 3 B." Resolution of the common council, passed July 6, 1875, authorizing the Bushwick Railroad Company to construct tracks on Broadway, between Graham and Flushing avenues, abstract of which is hereto annexed, marked "Exhibit 12 C." Resolution of the common council, passed October 2, 1876, authorizing and directing the New Williamsburgh and Flatbush Railroad Company to connect, by a switch and turnout, with tracks in the centre and on the south side of said Broadway, west of Dunham place, and with the turnout of the said Bushwick Railroad Company, and west of the Yates avenue line, abstract of which is hereto annexed, marked "Exhibit 13 C." Resolutions of the common council, passed June 30, 1879, and the resolutions of the rapid transit commissioners, under chapter 606 of the Laws of 1875, granting a franchise to the Kings County Elevated Railway Company on Broadway, from Broadway Ferry to the city line, abstracts of which are hereto annexed, marked "Exhibits 1 K, 2 K." Resolutions of the common council, passed April 4, 1881, authorizing the Brooklyn City Railroad Company to construct
109 and operate a double track railroad "through, along and upon Broadway, from its junction with Gates avenue to its junction with Magnolia street," also "through, along and upon Broadway, from its junction with Howard avenue to its junction with Magnolia street," abstract of which is hereto annexed, marked "Exhibit 14 C." Resolution of the common council, passed February 26, 1885, granting to the Greenpoint and Lorimer Street Railroad Company the right to construct and operate a railroad on Broadway, between the present Kent avenue and the present Driggs avenue, abstract of which is hereto annexed, marked "Exhibit 15 C." Resolution of the com-

mon council, passed April 30, 1885, giving franchises to the Calvary Cemetery, Greenpoint and Brooklyn Railroad Company on Broadway, from Union avenue to Troop avenue, abstract of which is hereto annexed, marked "Exhibit 16 C." Resolution of the common council, passed March 9, 1885, giving rights to the Greenpoint and Lorimer Street Railroad Company on Broadway, from Kent avenue to Driggs avenue, abstract of which is hereto annexed, marked "Exhibit 17 C." Resolution of the common council, passed December 21, 1885, giving consent to the Prospect Park and Coney Island Railroad Company to construct and operate a railroad on Broadway, between Park street and Locust street, abstract of which is hereto annexed, marked "Exhibit 8 N." Resolution of the common council, passed July 7, 1886, authorizing the Prospect Park and Coney Island Railroad Company and the Atlantic Avenue Railroad Company to construct and operate by cable power a railroad on Broadway, between Park street and Locust street, abstract of which is hereto annexed, marked "Exhibit 9 N." Resolution of the common council, passed July 12, 1886, authorizing the Union Elevated Railroad Company of Brooklyn to construct and operate an elevated railroad on Broadway, from the East river to Lexington avenue, abstract of which is hereto annexed, marked
110 "Exhibit 8 B." Resolution of the common council, passed October 11, 1886, giving additional rights to the Atlantic Avenue Railroad Company and the Prospect Park and Coney Island railroad on Broadway, abstract of which is hereto annexed, marked "Exhibit 10 N." Resolutions of the common council, passed December 10, 1888, granting to the Fulton Elevated Railway Company the right to construct and operate an elevated railroad on Alabama avenue, between East New York avenue and Eastern Parkway, abstract of which is hereto annexed, marked "Exhibit 3 K." Resolutions of the common council, passed June 19, 1893, authorizing the Brooklyn City Railroad Company to construct and operate a railroad on Broadway, from Ellery street to Lewis avenue, and on Broadway, from Melrose street to Myrtle avenue, abstract of which is hereto annexed, marked "Exhibit 18 C." Resolutions of the common council, passed June 19, 1893, giving to the Nassau Electric Railroad Company consent to construct and operate a railroad on Broadway, between South Eighth street and Marcy avenue, abstract of which is hereto annexed, marked "Exhibit 11 N."

The WITNESS: There were various grants to various railroad companies to build and operate railroads on adjacent or parallel streets. Those are in the faint red line indicated on the map. Nearly all of those grants which are special burdens on Broadway have been utilized in one way or another, in whole or in part, by the railroad companies to which they were given. Many of them relate to the terminus of the Broadway Railroad Company, at the foot of Broadway, near Broadway ferry, thereby giving to other railroad companies access to that very important terminal point, namely, the Broadway ferry. So that with this franchise to the Broadway Railway Company to use Broadway, similar franchises have been

given to various other companies for the same portion of Broadway, and have been utilized by compelling agreements for joint
111 use with other companies of the railroad tracks on Broadway, and also, as in the case of the important place at the foot of Broadway, by additional side tracks for terminal facilities, right along side of the side tracks of the railroad owned by the Broadway Railroad Company and the Brooklyn, Queens County and Suburban Railroad Company.

There is an elevated railroad running immediately over all of this special franchise of the Broadway Railroad Company from Broadway ferry to Alabama avenue, on Broadway, and on Fulton street, from Alabama avenue to Crescent avenue, and on Crescent avenue, from Fulton street to Jamaica plank road, as shown on the map. The special franchises of the Broadway Railroad Company shown in hatched blue on the map were obtained from the highway commissioners of the town of New Lots, in 1877, when that territory was part of the town of New Lots, in Kings county, and not a part of the city of Brooklyn. Afterwards it was annexed to the city of Brooklyn, in 1886, I believe.

The original special franchise of the Broadway Railroad Company, from Kent avenue to approximately Alabama avenue, on Broadway, shown in heavy blue on the map, consists of 46,940 feet, single track, and the value of the tangible property is $67,037.61. In all cases I refer to the tangible property in the streets. The extension of the Broadway Railroad Company under grant of the highway commissioners of the town of New Lots, in 1877, shown in hatched blue on the map, consists of 20,582 feet of single track, and the value of the tangible property is $22,722.59. The values I give in each case, unless otherwise stated, will be the present value based on the cost of reproduction, allowing for depreciation. (Consents of the highway commissioners referred to were offered and received in evidence, and abstracts thereof are hereto annexed, marked "Exhibit 13 S.") As special burden upon the franchise
112 granted by the town of New Lots is chapter 585 of the Laws of 1874, and the acts amendatory thereof, which were offered and received in evidence, and abstracts thereof are hereto annexed, marked "Exhibits 1 B, 2 B and 3 B," respectively.

The WITNESS: These acts granted to the Brooklyn Elevated Railroad Company and its predecessors the right to construct an elevated railroad on Fulton street, between the boundary line between the old city of Brooklyn and the town of New Lots and Crescent avenue; also the decision of the rapid transit commission appointed under chapter 606 of the Laws of 1875, and the resolutions of the common council of the city of Brooklyn, adopted February 20, 1891, granting to the Seaside and Brooklyn Bridge Elevated Railroad Company the right to construct an elevated railroad in connection with the Brooklyn Elevated railroad on Crescent avenue, between Fulton avenue and the Jamaica plank road, and that formed a competing line immediately over the surface railroad on those two

streets, comprising all the special franchises granted by the town of New Lots to the Broadway Railroad Company. (Offered and received in evidence and abstracts thereof hereto annexed marked "Exhibit 6 B and 7 B," respectively.) The heavy green color on the map shows the special franchise of the Broadway Railroad Company on Reid avenue, from Broadway to Fulton street. This was granted by chapter 788 of the Laws of 1873. (Offered and received in evidence and abstract thereof hereto annexed, marked "Exhibit 1 S.") The portion of the special franchise of the Broadway Railroad Company between Fulton street and Atlantic avenue is marked in black on the map, and was granted to the Broadway Railroad Company by resolution of the common council, passed July 8, 1878. (Offered and received in evidence and abstract thereof hereto annexed marked "Exhibit 2 S.") The portion of the special franchise marked in broken green on the map is an extension of the Broadway Railroad Company on Utica avenue, constructed under resolution of the common
113 council, passed July 17, 1893. (Offered and received in evidence and abstract thereof hereto annexed marked "Exhibit 3 S.") The length of this extension, comprising the portion in heavy green, black and broken green, all extensions of the Broadway Railroad Company, is 21,106 feet of single track, and the value of the tangible property is $29,296.07. The common council, by resolution passed December 19, 1870, granted to the Bushwick Railroad Company the right to build on Reid avenue, between Fulton street and Broadway, and on Utica avenue, from Fulton street to the city line. (Offered and received in evidence and abstract thereof hereto annexed marked "Exhibit 9 C.") Chapter 703 of the Laws of 1873 also gave the right to the Atlantic Avenue Railroad Company to build a railroad on Utica avenue, from Atlantic avenue to Clarkson street. (Offered and received in evidence and abstract thereof hereto annexed marked "Exhibit 12 N.") In order to connect the line on Reid avenue with the line on Utica avenue, Reid avenue only extending as far southerly as Fulton street, it was necessary to pass over the tracks of the Brooklyn City Railroad Company, on Fulton street. A contract for such use had to be entered into by the Broadway Railroad Company. Except for such contract they could not operate those two lines in connection. Without such contract all the portion of those two lines southerly of Fulton street would have been of no value. So that it would not be worth even the value of the tangible property except for the purpose of taking up the tangible and selling it for scrap, which depends on the market.

The portion shown in yellow on the map was a franchise granted to the Bushwick Railroad Company by resolution of the common council, adopted October 18, 1875. (Offered and received in evidence and abstract thereof hereto annexed marked "Exhibit 19 C.") That franchise was assigned to the Yates Avenue and Flat-
114 bush Railroad Company, which was subsequently consolidated with the Broadway Railroad Company, after lease, which was confirmed by chapters 480 and 481 of the Laws of 1883. (Offered

and received in evidence and marked "Exhibit 6 S.") In addition to the original franchise the common council of Brooklyn granted to the Broadway Railroad Company, on July 17 and 24, 1893, the right to operate a railroad over this same route by electricity. (Offered and received in evidence and marked "Exhibit 3 S.") Chapter 479 of the Laws of 1874 granted to the East Brooklyn Railroad Company the right to construct a railroad on that portion of this route from Hopkins street to Fulton street, comprising nearly all the route. (Offered and received in evidence and abstract thereof marked "Exhibit 14 S.") Chapter 622 of the Laws of 1871 conferred similar rights to the Brooklyn, Winfield and Newtown Railroad Company. (Offered and received in evidence and marked "Exhibit 10 C.") Chapter 703 of the Laws of 1873 granted to the Atlantic Avenue Railroad Company the right on Troy avenue, from Atlantic avenue to Clarkson street. (Offered and received in evidence and marked "Exhibit 12 N."

The total length of this special franchise on Sumner and Troy avenues was 19,050 feet of single track, and the value of the tangible property was $20,990.38.

The portion shown in dark, heavy brown on the map consists of franchises to the Broadway railroad on Ralph avenue, from Broadway to Fulton street and from Fulton street to Douglass street. The authority for this railroad was conferred by resolutions of the common council, adopted June 15, 1885. (Offered and read in evidence and abstract thereof marked "Exhibit 15 S.") Also resolutions of the common council, passed July 17, 1893. (Offered and received in evidence and abstract thereof marked "Exhibit
115 3 S.") These resolutions gave rights to use electricity on those streets. Also resolutions of the common council, passed July 24, 1893. (Offered and received in evidence and marked "Exhibit 3 S.") The length of this extension was 15,118 feet of single track, and the value of the tangible property $25,727.95.

Chapter 585 of the Laws of 1874 (Exhibit 1 B), and the acts amendatory thereof, gave the Brooklyn Elevated Railroad Company the right to operate and construct an elevated railroad on Ralph avenue, between Lexington avenue and Marion street. This railroad is in existence and takes part of the revenue which would otherwise go to the Brooklyn, Queens County and Suburban Railroad Company, as successor of the Broadway Railroad Company. In order to operate a consecutive line on this franchise from Douglass street to Broadway it was necessary to get a right from the Brooklyn City Railroad Company on Fulton street. Without that right the portion southerly of Broadway would be of no value except for scrap.

That takes care of all the special franchises of the Broadway Railroad Company.

In addition to those the Brooklyn, Queens County and Suburban Railroad Company have the franchises which were acquired by merger from the Broadway Ferry and Metropolitan Avenue Railroad Company. The latter company received its franchises through the following companies: Metropolitan Railroad Company, incorpo-

rated in 1863, and sold under execution or foreclosure in 1869. Grand Street Ferry and Middle Village Railroad Company, organized in 1869, succeeded to the rights of the Metropolitan Railroad Company, and was sold under foreclosure in 1870. The North Second Street and Middle Village Railroad Company, organized in 1870, and succeeding to the rights of the Grand Street Ferry and Middle Village Railroad Company, was sold under foreclosure in
116 1885. The Brooklyn, Bushwick and Queens County Railroad Company, organized in 1885, and acquiring the property of the former North Second Street and Middle Village Railroad Company, was sold under foreclosure in 1892 and the property acquired by the Broadway Ferry and Metropolitan Avenue Railroad Company, which was consolidated, under the general law, with the Brooklyn, Queens County and Suburban Railroad Company January 16, 1894.

The special franchise of the Broadway Ferry and Metropolitan Avenue Railroad Company is shown on the map in heavy red and extends from Kent avenue, borough of Brooklyn, to Middle Village road, borough of Queens. There are 23,640 feet, measured as single track, in the borough of Brooklyn, the value of the tangible property being $33,994.41. There are 30,353 feet of single track in the borough of Queens, measured as single track, the value of the tangible property being $75,524.78. This special franchise was granted under chapter 910 of the Laws of 1866. (Offered and received in evidence and abstract thereof marked "Exhibit 16 S.") It was given to the Metropolitan Railroad Company, and, so far as the portion within city of Brooklyn is concerned, it was supplemented by resolution of the common council, passed December 31, 1863; also by resolution of the common council, passed November 20, 1893, authorizing the use of electricity. (Resolutions offered and received in evidence and abstracts thereof marked "Exhibits 17 S and 18 S," respectively.) The Brooklyn, Winfield and Newtown Railroad Company, by chapter 718 of the Laws of 1869 and chapter 612 of the Laws of 1870, received rights on the same street. (Offered and received in evidence and abstracts thereof marked respectively "Exhibits 19 S and 20 S.") The Grand Street and Newtown Railroad Company received rights by chapter 740 of the Laws of 1870 on a portion of the same franchise. The Grand Street and Newtown Railroad Company had constructed tracks on a small
117 portion of this franchise prior to the construction of the tracks by the Metropolitan Railroad Company. (Offered and received in evidence and abstract thereof marked "Exhibit 20 C.") As to the value of those special franchises originally granted to the Broadway Ferry and Metropolitan Avenue Railroad Company, marked in heavy red on the map, the portion in Queens borough is the only portion of the special franchise of the Brooklyn, Queens County and Suburban Railroad Company in the county of Queens, so that the entire assessment of special franchise against the Brooklyn, Queens County and Suburban Railroad Company in the borough of Queens is this portion of this heavy red line in that borough.

The borough boundary line is shown on the map by the thin black line as part of the map.

This company, in order to get access to the ferries on the East river, was obliged to contract with the Brooklyn City Railroad Company for the right to use its track from the foot of Metropolitan avenue on North Second street to Broadway ferry on Kent avenue. The distance is about half a mile, so it is further than could be condemned under general law. Without permission to operate on that stretch of track, the earning capacity of that special franchise would be practically nothing, at least it would be very small. I mean by that the gross earning capacity, or a very considerable part of its revenue, is between Broadway ferry and Lutheran cemetery, as shown on the map, and without access to the ferry, which it gets over those tracks of the Brooklyn City Railroad Company, that business could not be obtained, and that is the principal part of the line's business. Other railroads furnish transportation between those points so that people could reach the point without going over this road; by the Broadway Railroad Company on Broadway and the Brooklyn City Railroad Company on Myrtle avenue, connecting at Ridgewood with its Lutheran Cemetery line, by the Brook-
118 lyn City lines in the western part of Brooklyn, connecting with its Myrtle or Gates Avenue lines, and thence to its Lutheran Cemetery line. The earnings of that particular special franchise, namely, of the Broadway Ferry and Metropolitan Avenue Railroad Company, that is the railroad marked in red, for the year ending June 30, 1899, were $56,484, which is at the rate of 15 cents per car mile. It is impossible, without an actual count of passengers, to determine what proportion of that revenue was received on the tracks of the Brooklyn City Railroad Company from Broadway ferry to North Second street on Kent avenue, but it is safe to say that a very considerable portion of the revenue is received from that source. The passenger earnings from the special franchise itself were not sufficient to show any net earning capacity after paying operating expenses and allowing for depreciation. The cost of operating per car mile on a line of that character is probably 15 cents, without allowing for any interest on cost of construction. If the company had to have its own power-house and operated that line without the economies resulting from using other companies' power-houses, etc., the road would be unprofitable, as shown by its separate operation during twenty-five or thirty-years, and the four or five foreclosures which took place during that period. That piece of road has no connection with any other part of the Brooklyn, Queens County and Suburban system except what it gets from the Brooklyn City tracks on Kent avenue, between North Second street and Broadway.

As an independent railroad, this railroad marked in red, for operation separate and independent by a separate and independent company, the tangible property would have a value not much in excess of its value for scrap. It wouldn't be worth operating. A large portion of the value of the tangible property in the borough

of Queens, given at $75,524, is occasioned largely by the heavy
119 feeder wires that are constructed upon that line; the value of the track itself is considerably smaller. So that in the case of this line, under the conditions stated, the present value, based on the cost of reproduction and allowing for depreciation, does not represent the fair value of the property, but is considerably in excess of fair value. The scrap value of copper is greater than that of old rails. For scrap purposes it would be more than half, I should think three-quarters of the value I have given, based on the cost of reproduction.

Q. How does the earning capacity of that portion in the borough of Queens compare with the earning capacity of that portion in the borough of Brooklyn, that is, the nature of the country, etc.?

A. Except for the business which comes from the two cemeteries at the eastern terminus, the Lutheran cemetery and the St. John cemetery, the revenue obtained in the borough of Queens is very much less. This is not a well built-up line over any of its route, even that part in the borough of Brooklyn. Its business is chiefly the business which comes between the Broadway ferry or New York and the cemeteries at the eastern end.

The territory in the borough of Queens is practically all rural territory, and continues of that character for some distance in the borough of Brooklyn. While in Brooklyn it is all built up as far as it is capable of being built up, what I mean by that is, there are no large vacant spaces of what you would call suburban land, yet it is not closely built; the buildings are scattered here and there; there is no congestion of buildings, and the buildings are small.

The earnings of the various branch lines of the Broadway Railroad Company are not sufficient to make profitable the operation of these extensions separately from the main franchise of the Broadway Railroad Company.

120 The Brooklyn, Queens County and Surburban Railroad Company acquired its railroad properties that had special franchises from two companies, the Broadway Railroad Company and the Broadway Ferry and Metropolitan Avenue Company.

It may be true that real estate may have disappeared by fire or otherwise, and then reconstruction would appear in the cost of the property as carried on the books of the company. All such items of reconstruction might appear in the total cost, while the value would be value as they now appear; so that the cost of real estate and improvements during a period of years on the books inevitably would be greater, that is, ordinarily would expect it to be much greater than the present value of the tangible property as it now stands. In reference to all of those companies with which I am connected, in many cases it is true there have been reconstructions where the property has been made all over again, and a new issue of bonds for that purpose, for instance, reconstructing from horse-power to electricity, and the cost has been repeated over again in reconstruction; for instance, take the horse railroads as they stood before conversion into electricity, the conversion of electricity

required an entire new construction of the track; so the old trackage and old cars were practically thrown away, to a great extent, and yet the present value as it now stands is represented only by the cost of the last reconstruction.

Cross-examination:

The Brooklyn, Queens County and Suburban Railroad Company acquired by merger about January 23, 1894, the property of the Broadway Railroad Company and the Broadway Ferry and Metropolitan Avenue Railroad Company. I am not able to state what consideration was paid by the relator for the property and assets of these companies. I presume the method of consolidation
121 was by exchanging the stock and bonds of the new company for the stock and bonds of the old companies which went into the consolidation, but I am not familiar with it. The amount of the outstanding bonds of the Brooklyn, Queens County and Suburban Railroad Company is $3,500,000 first mortgage bonds, $2,834,000 first consolidated mortgage bonds, $240,000 of Jamaica and Brooklyn Road Company's bonds. A portion of the first consolidated mortgage bonds have been guaranteed by the Brooklyn Heights Railroad Company; whether they were guaranteed in January, 1900, or not I am not sure.

Q. What was the value of these bonds at the time in question?

Objected to as immaterial and improper. Objection overruled. Exception.

A. The first mortgage bonds, of which there are outstanding three and one-half millions, are quoted at about 110, and were at that time, as I recall. The first consolidated mortgage bonds were quoted at 104½ in the "Commercial and Financial Chronicle" of January 6, 1900, which was a few days before the second Monday of January. The only other bonds of that company outstanding are those of the Jamaica and Brooklyn Road Company, consisting of $240,000 par value. Those bonds are in the same category as some of the others I have mentioned, very inactive, occasionally sold at auction to close up an estate, and the last sale I recall was in the neighborhood of 104 or 105; the bonds are redeemable at 105 under certain conditions, and that operates to influence their market value to some extent. These bonds are security only upon the private right-of-way, so that the mortgage securing those bonds is not a lien on any of the special franchises. My understand-
122 ing is that the after-acquired property clause of that mortgage would not give those bonds a security upon any other property than that particular Jamaica road, which is a private right-of-way.

The Brooklyn Heights Railroad Company in January, 1900, was paying an annual rental for the Brooklyn, Queens County and Suburban railroad amounting to $328,700.01. That represents merely the fixed charges; just the interest on bonds. This lease was from year to year and has now been terminated.

The other companies which use, or are entitled to use, the Broadway terminal, the special franchise at the Broadway ferry, are the Brooklyn Elevated Railroad Company, the Brooklyn City Railroad Company, by not only its own original grants, but by grants which it obtained through subordinate companies which were afterward merged with the Brooklyn City Railroad Company and are mentioned in the leases or grants which I recited a few moments ago, and the Nassau Electric Railroad Company.

Q. All of those companies are owned by the Brooklyn Rapid Transit?

A. No; the Brooklyn City Railroad Company is not owned by the Brooklyn Rapid Transit Company. The Brooklyn City and Newtown Railroad Company has access to that ferry by Kent avenue. That is a rival company and in no way connected with the Brooklyn rapid transit system of companies. The Brooklyn, Queens County and Suburban Railroad Company's stock is all common stock. It has never paid a dividend, except a dividend of one per cent. paid in June last out of its rental received from the Brooklyn Heights Railroad Company. We then had a slightly different contract for rental than the one I referred to, and paid something in addition to the fixed charges and taxes; a very small amount.

123 That was only for the last year; only for the year ending June 30, 1901. Prior to that year no net rental was paid or agreed to be paid by the Brooklyn Heights Railroad Company for its lease of the Brooklyn, Queens County and Suburban Railroad Company and franchise. Last year it was only $20,000 above fixed charges and operating expenses. In addition so the property described as special franchises here, the mortgage of the Suburban Company covers other property, the property of the Jamaica and Brooklyn Road Company, at that time including the private right-of-way over six miles in length, from East New York to Jamaica, double track surface railroad, electrically operated; a very well traveled piece of road; also valuable real estate, cars, equipment of various kinds, personal property. All the railroad indicated in blue on this map (Exhibit C) is immediately under an elevated railroad. The surface railroad of this company, as indicated in blue, is a double track surface railroad. The overhead elevated is double track railroad. Where I have stated the mileage in single track it has been double track measured as single.

The capital stock of the Brooklyn, Queens County and Suburban Railroad Company is $2,000,000, all common stock.

Q. What is the value of that stock?

Objected to as immaterial and improper; objection overruled; exception.

A. It has only a nominal value. The situation as to its stock is much the same as that of the Brooklyn Heights Railroad Company. The stock is all owned by the Brooklyn Rapid Transit Company,

except the shares qualifying directors. The value of the stock is largely prospective; the railroad property has not earned sufficient surplus over and above its operating expenses and fixed
124 charges to justify anything except a nominal value being attached to the stock. It never paid a dividend until last June, when it paid one per cent. on the capital stock, amounting to $200,000. It hadn't paid any dividend at the time this assessment was made. I should say it did not earn any dividend before and that there were not any profits which went to the Brooklyn Heights as the lessee. The accounts didn't reveal precisely, but from the earnings of various lines compared with the earnings under independent management, it earned no surplus over and above fixed charges and operating expenses; no substantial surplus; might have been a few thousand dollars one way or the other, but not a considerable amount.

Q. What was the value of the capital stock of the Brooklyn, Queens County and Suburban Railroad Company on January 7, 1900? Was it the aggregate value of the share stock in each case? In other words, was it the multiple of the number of shares and value of each share in each case? This question is directed to the value of the capital stock as a total as distinguished, so far as any distinction exists, from the value of the share stock, so-called.

This inquiry is intended to ascertain the actual value of the entire assets of the company of every nature other than bonded indebtedness on the date named.

Objected to as immaterial, improper and too indefinite and complicated to admit of an intelligent answer.

Objection overruled; exception.

A. I do not think I understand the question, and I am unable to answer it.

Plaintiff's counsel read in evidence the following affidavit of E. C. Shaler, in pursuance of stipulation that it should be of the
125 same force and effect as if the witness were present and testifying to statements therein contained.

STATE OF NEW YORK, }
County of Kings, } ss:

E. C. Shaler, being duly sworn, deposes and says that he is an engineer employed in the engineering department of the Brooklyn Heights Railroad Company, lessee of the Brooklyn, Queens County and Suburban Railroad Company, and has had upwards of five years' experience in the construction of electric street railroads, and was, on the 1st day of July, 1899, familiar with the cost of material and labor necessary for such construction.

That he has carefully computed the cost of reproducing, on the 1st day of July, 1899, the various lines of the Brooklyn, Queens County and Suburban Railroad Company described in the evidence

of T. S. Williams, vice-president of the Brooklyn Heights Railroad Company in the above-entitled proceedings.

That the figures in said evidence set opposite to the description of each of the several lines correctly state the cost, on the 1st day of July, 1899, of reproducing the said certain lines, less a reasonable allowance for depreciation, based upon the length of time during which such construction had been in place.

Deponent further says that the cost of the rails on a given piece of track is approximately 30 per cent. of the total cost of such construction, the balance of the cost being made up of the necessary ties, plates, labor, poles, wires, etc.

That the figures as given upon the evidence hereinbefore described are based upon $27.36 per ton as the cost of steel rails, which was the actual cost in Brooklyn of steel rails on the 1st day of July, 1899.

126 Deponent further says that the actual cost of steel rails in Brooklyn on the 2d day of January, 1900, was $37.08 per ton, being an increase of 33 per cent. over the cost of steel rails in said evidence.

That if the cost of reproduction is to be figured upon the second Monday of January, 1900, then 10 per cent. should be added to the cost of reproduction indicated in the aforesaid testimony.

E. C. SHALER,

Subscribed and sworn to before me this 31st day of July, 1901.

C. F. HIGHAM,
Commissioner of Deeds for the City of New York,
Residing in the Borough of Brooklyn.

TIMOTHY S. WILLIAMS, recalled for the plaintiff, testified:

Examined by Mr. COLLIN:

I am vice-president of the Nassau Electric Railroad Company, which was incorporated under the general laws of the State of New York March 13, 1893, and owns and operates railroads entirely in the borough of Brooklyn and across the Brooklyn bridge into the borough of Manhattan. The special franchises of the Nassau Electric Railroad Company, as constituted on the second Monday of January, 1900, consisted of twenty different franchises granted to twenty different companies, or individuals. They are as follows:

Nassau Electric Railroad Company, incorporated March 13, 1893.

127 Kings County Electric Railway Company, incorporated November 29, 1892; merged with the Nassau Electric Railroad Company August 1, 1898.

Coney Island, Fort Hamilton and Brooklyn Railroad Company, incorporated January 27, 1892; merged with the Nassau Electric Railroad Company August 1, 1898.

The Union Railroad Company, incorporated June 19, 1884;

merged with the Nassau Electric Railroad Company August 1, 1898.

The United Railroad Company, incorporated December 27, 1897; merged with the Nassau Electric Railroad Company January 26, 1899.

The Atlantic Avenue Railroad Company, incorporated May 1, 1872; merged with the Nassau Electric Railroad Company January 26, 1898.

The Atlantic Avenue Railroad Company formerly consisted of the following companies:

The Brooklyn, Bath and West End Railroad Company, incorporated January 22, 1879; merged with the Atlantic Avenue Railroad Company September 21, 1898.

The Brooklyn, Bath and Coney Island Railroad Company, which was the predecessor of the Brooklyn, Bath and West End Railroad Company, and whose property was sold under foreclosure.

The Brooklyn and Jamaica Railroad Company, the Brooklyn Central Railroad Company, the Brooklyn Central and Jamaica Railroad Company, the Brooklyn and Jamaica Railway Company, these last four being predecessors of the Atlantic Avenue Railroad Company and passing under various foreclosures and reorganizations to the Atlantic Avenue Railroad Company.

The South Brooklyn Central Railroad Company, incorporated April 17, 1877; merged with the Atlantic Avenue Railroad
128 Company December 23, 1893, the predecessors of the South Brooklyn Central Railroad Company, having been the South Brooklyn and Bergen Street Railroad Company, incorporated January 22, 1863, were consolidated with the Brooklyn and Canarsie railroad in 1865, which in turn was succeeded by the South Brooklyn and Park railroad, incorporated April 26, 1870, which in turn was succeeded April 17, 1877, by the South Brooklyn Central Railroad Company, the various successions being marked by a foreclosure and reorganization proceeding.

The Park Avenue Railroad Company, incorporated February 9, 1870, which was consolidated with the Greenwood and Coney Island Railroad Company into the Prospect Park and Coney Island Railroad Company September 30, 1874, the Greenwood and Coney Island Railroad Company having been incorporated August 16 1872, and the Prospect Park and Coney Island Railroad Company October 9, 1874. These last three companies were not merged with the Atlantic Avenue Railroad Company, but all the city special franchises of those companies were assigned to the Atlantic Avenue Railroad Company in 1887 by the Prospect Park and Coney Island Railroad Company.

The Coney Island and Gravesend Railway Company, incorporated March 22, 1893, all of the stock of which is owned by the Nassau Electric Railroad Company, having been acquired in December, 1899, but which has not yet been merged with the Nassau Electric Railroad Company. All these companies own special franchises, which are assessed to the Nassau Electric Railroad Company. The

Coney Island and Gravesand Company was then leased to the Nassau. The special franchise of the Coney Island and Gravesand is the only special franchise assessed to the Nassau which was not owned by the Nassau. It was assessed to the Nassau by the request of both companies instead of being assessed separately. Of these twenty companies eight have gone through foreclosure pro-
129 ceedings, and every one has gone through either foreclosure or reorganization proceedings of some kind during its history.

In addition to the special franchises of the companies which I have named, the Nassau Electric Railroad Company, by a contract with the trustees of the New York and Brooklyn bridge and with the bridge commissioner of the city of New York, has a contract for operating its cars across the Brooklyn bridge.

I have here a map, marked "D 1," showing the special franchises constructed in January, 1900, comprised in the Nassau Electric Railroad Company system and shown on the map according to the companies to which the separate franchises were granted. The franchises of each company are shown in distinctive color, as indicated on the map and the paper annexed. (The map is offered and received in evidence and marked "Exhibit D 1."

The WITNESS: I have also a map, numbered D 2, showing the special franchises of the Brooklyn and Jamaica Railroad Company, with the authority of such franchises. (The special statutes, contracts and resolutions of the common council are all offered and received in evidence.) I would like to point out with reference to these franchises of the Brooklyn and Jamaica Railroad Company that those shown in the heavy yellow line were granted to the company pursuant to a contract entered into between the city of Brooklyn and the company, whereby the company discontinued the use of steam cars on Atlantic avenue and undertook to close a tunnel on Atlantic avenue through which its steam cars had formerly run. That contract and the franchise to operate horse cars on the surface were authorized by act of the legislature, as set forth in the memorandum attached to the map. That particular franchise was forced upon the city by this contract, and the company gave up the tunnel and the right to use steam in consideration of it.

The following is a copy of the memorandum attached to the map "Exhibit No. D 2," and which I believe to be true, including
130 mileage and the value of tangible property in the streets in

each case, based on the cost of reproduction, allowing for depreciation:

	Mileage measured as single track.	Value of tangible property.
HEAVY YELLOW.—Obtained by contract dated Apr. 28, 1860 (offered in evidence and marked Exhibit No. 13 N) bet. the Brooklyn & Jamaica R. R. Co. and commissioners of the city of Brooklyn appointed under ch. 484, Laws 1859 (offered in evidence and marked Exhibit No. 14 N), whereby in consideration of closing the tunnel railroad in Atlantic St. and relinquishing the right to use steam power within the city, the Brooklyn & Jamaica R. R. Co. by virtue of ch. 484, Laws 1859, and ch. 444, Laws 1859 (offered in evidence and marked Exhibit No. 15 N), received the right to lay rails upon the surface of Atlantic street and to run horse cars for freight or passengers from South ferry to city line. Special permission for track bet. Fort Greene place (about 5th Ave.) and Washington Ave. was granted by resolution of com. council, Dec. 20, 1880 (offered in evidence and marked Exhibit No. 16 N). In August, 1860, by ch. 460, Laws 1860 (offered in evidence and marked Exhibit No. 17 N), the Brooklyn & Jamaica R. R. Co. was consolidated with the Brooklyn Central R. R. Co. under the name of the Brooklyn Central & Jamaica R. R. Co. The property of the Brooklyn Central & Jamaica R. R. Co. was sold under foreclosure, Jan. 26, 1865, and passed to the Brooklyn & Jamaica Railway Co. On Sept. 28, 1872, the property of the latter company was sold under foreclosure proceedings and conveyed to Wm. Richardson, who by deed dated Feb. 28, 1874, conveyed the same to the Atlantic Ave. R. R. Co.....	4.366	$22,949 26
BROKEN YELLOW.—Granted to the Brooklyn & Jamaica R. R. Co. by res. C. C. M'ch 26, 1860 (offered in evidence and marked Exhibit No. 1 N), 5th Ave. from Atlantic Ave. to 37th St..	6.055	77,488 21
Totals.....	10.421	$100,437 47

The WITNESS: I also have a map numbered D 3, showing the special franchise of the South Brooklyn Central Railroad Company and its predecessor companies, together with the authorities for such franchises.

131 The following is a copy of the memorandum attached to the map "Exhibit No. D 3," which I believe to be true, including mileage and the value of tangible property in the streets

in each case, based on the cost of reproduction, allowing for depreciation:

	Mileage measured as single track.	Value of tangible property.
DOTTED BLACK.—The history of this company is as follows:		
The South Brooklyn & Bergen St. R. R. Co. incorporated Jan. 22, 1863, authorized by ch. 303, Laws 1863 (offered in evidence and marked Exhibit No. 18 N), to lay tracks on routes specified in art. of association. In 1865 this company was consolidated with Brooklyn & Canarsie R. R. Co. by ch. 558, Laws 1865 (offered in evidence and marked Exhibit No. 19 N), under name of Brooklyn & Canarsie R. R. Co. which was incorporated Jan. 18, 1865. The South Brooklyn & Park R. R. Co. incorporated Apr. 26, 1870, succeeded to all the property of the Brooklyn & Canarsie R. R. Co. The South Brooklyn Central R. R. Co. organized Apr. 17, 1877, acquired by foreclosure July 25, 1877, all the property of the South Brooklyn & Park R. R. Co.		
Franchises on Sackett St. from Columbia St. to Hoyt St., through Hoyt St. to Bergen St., and through Bergen St. to Nostrand Ave. were granted to Brooklyn & Canarsie R. R. Co. or its predecessor the South Brooklyn & Bergen St. R. R. Co. by ch. 303, Laws 1863 (offered in evidence and marked Exhibit No. 18 N) ch. 558, Laws 1865 (offered in evidence and marked Exhibit No. 19 N) ch. 513, Laws 1863 (offered in evidence and marked Exhibit No. 20 N).		
Additional authority for extension on Bergen St. from Kingston Ave. to about Albany or Troy Aves. granted by res. C. C. Dec. 31, 1883 (offered in evidence and marked Exhibit No. 21 N) and on Bergen St. from Albany Ave. to Buffalo Ave. by res. C. C. May 18, 1891 offered in evidence and marked Exhibit No. 22 N).....	8.095	$81,679 95

THE WITNESS: I have also map numbered D 4, showing the special franchises of the Atlantic Avenue Railroad Company, together with the authority for the same. I would point out that, as to the franchise on Seventh avenue, between Flatbush avenue and
132 Twentieth street, which was granted by chapter 705 of the Laws of 1873, this authority was not considered valuable by the company, and no track was constructed on that franchise until 1882, and then by request of the common council, as expressed by its resolution passed in that year.

The following is a copy of the memorandum attached to the map "Exhibit No. D 4," which I believe to be true, including the statement of mileage and of value of tangible property in streets, which is based on cost of reproduction new, allowing for depreciation:

	Mileage measured as single track.	Value of tangible property.
HEAVY BLACK.—Boerum St. from Bergen St. to Fulton St., Adams St. from Fulton St. to Front St., Front St. from Adams St. to Fulton St. (single track), Fulton St. from Front St. to Ferry (single track), Bergen St. from Hoyt St. to Boerum Pl., Butler St. from Washington Ave. to Rogers Ave., 7th Ave. from Flatbush Ave. to 20th St.		
All the above were granted by ch. 704, Laws 1873 (offered in evidence and marked Exhibit No. 23 N) to the Atlantic Ave. R. R. Co. directly and by ch. 705, Laws 1873 (offered in evidence and marked Exhibit No. 24 N) granting certain franchises to Joel B. Erhardt and others, by him assigned to Wm. Richardson on June 18, 1873, and by Richardson assigned on M'ch 2, 1874, to the Atlantic Ave. R. R. Co.		
Washington Ave. from Atlantic Ave. to Butler St., Buffalo Ave. from Bergen St. to Douglass St.		
Granted by ch. 703, Laws 1873, to Atlantic Ave. R. R. Co. (offered in evidence and marked Exhibit No. 12 N)		
20th St. from 7th to 9th Ave. under provisions of general law.		
19th St. from 7th Ave. to car barn.....	9.048	$55,800 81

The WITNESS: I also have map numbered D 5 showing the special franchises of the Park Avenue Railroad Company, the Greenwood and Coney Island railroad and the Prospect Park and Coney Island Railroad Company, with the authority for the same.

The following is a copy of the memorandum attached to the map "Exhibit No. D 5," which I believe to be true, including the
133 statement of mileage and of value of tangible property in

streets, which is based on cost of reproduction, allowing for depreciation:

	Mileage measured as single track.	Value of tangible property.
DOTTED RED.—Concord St. from Washington St. to Navy St., Navy St. from Park Ave. to Concord St., Vanderbilt Ave. and 9th Ave. from Myrtle Ave. to Greenwood cemetery, except bet. 9th & 15th Sts. (C. I. & B.), Park Ave. from Washington Ave. to Broadway.		
Above granted by ch. 600, Laws 1870 (offered in evidence and marked Exhibit No. 25 N), and ch. 448, Laws, 1874 (offered in evidence and marked Exhibit No. 26 N).....	9.104	$64,413 53
Greenwood & Coney Island R. R. Co.		
(Organized Aug. 16, 1872, and consol. with Park Ave. R. R. Co. into Prospect Park & C. I. R. R. Co., Sept. 30, 1874).		
DOTTED GREEN.—15th St. from 9th Ave. to Hamilton Ave., Hicks St. from Hamilton Ave. to Atlantic Ave.		
Above granted by ch. 307, Laws 1874 (offered in evidence and marked Exhibit No. 27 N).....	3.972	14,639 78
Prospect Park and Coney Island R. R. Co.		
DOTTED BLUE.—Park St. from Park Ave. to Beaver St.; through Beaver St. to Bushwick Ave.; through Jefferson Ave. to Central Ave.; through Central Ave. to Moffat St.		
Above granted by res. C. C., Dec. 21, 1885 (offered in evidence and marked Exhibit No. 8 N); July 7, 1886 (use of cable power), (offered in evidence and marked Exhibit No. 9 N), and Oct. 11, 1886 (cable power), (offered in evidence and marked Exhibit No. 28 N).....	4.17	30,124 22

The WITNESS: I also have a map numbered D 6, showing the original special franchises of the Nassau Electric Railroad Company in the borough of Brooklyn, town of Flatlands and town of Gravesend, and would call particular attention to the separation of these franchises. They are widely separated by miles of streets, and could not be operated separately at a profit, and can only be utilized in connection with routes of other companies.

134 By Mr. COMAN:

Q. Are they connected by other lines which are a part of the Brooklyn rapid transit system?

A. Yes.

The following is a copy of the memorandum attached to the map

"Exhibit No. D 6," which I believe to be true, including the statement of mileage and the value of tangible property, allowing for depreciation:

	Mileage measured as single track.	Value of tangible property.
HEAVY BLUE.—Granted by com. council June 19, 1893 (offered in evidence and marked Exhibit No. 11 N) (see vol. 2, p. 437) on South 8th St., bet. Kent Ave. and Broadway; So. 5th St., bet. Marcy Ave. and Union Ave.; Johnson Ave., between Union Ave. and Morgan Ave.; Morgan Ave., bet. Johnson Ave. and Hamburg Ave.; Hamburg Ave., bet. Morgan Ave. and Evergreen cemetery. Marcy Ave., from No. 2nd St. to Fulton St. Rogers Ave., from boundary line bet. Flatbush and Brooklyn to Bergen St. Liberty Ave. from city line to East New York Ave.; East New York Ave., from Liberty Ave. to Douglass St.; Douglass St., from East New York Ave. to Rogers Ave.	23.477	$176,158 76
Town of Flatlands.		
DOTTED BLUE.—Granted by highway commissioners, town of Flatlands, May 10, 1895 (offered in evidence and marked Exhibit No. 29 N) on Rogers Ave., from town line bet. Flatbush and Flatlands to Ave. F; Ave. F. from Rogers Ave. to Ocean Ave.; Ocean Ave. from Ave. F to town line bet. Flatlands and Gravesend.	3.515	25,709 79
Town of Gravesend.		
HATCHED BLUE.—Granted by highway commissioners, town of Gravesend, Feb. 20, 1894 (offered in evidence and marked Exhibit No. 30 N) on Ocean Ave., from town line bet. Flatlands and Gravesend to Emmons Ave.	4.696	35,982 68
Totals	31.688	$237,941 23

The WITNESS: I have also map numbered D 7, showing the special franchises of the Kings County Electric Railway Company. These extend almost entirely in the old towns of Flatbush and Flat-
135 lands. They run through suburban communities and are absolutely unprofitable, even as operated in connection with other franchises.

By Mr. COMAN:

Q. Is it possible to tell separately whether they are profitable or not?

A. As to those lines it is very easily shown.

The following as a copy of the memorandum attached to the map

"Exhibit No. D 7," which I believe to be true, including the statements of mileage and of the value of tangible property in the streets, which is based on cost of reproduction new, allowing for depreciation:

	Mileage measured as single track.	Value of tangible property.
HEAVY GREEN.—Granted June 19, 1893. Res. C. C. (vol. 2, p. 450) (offered in evidence and marked Exhibit No. 31 N) as follows: Rockaway Ave. from Broadway to boundary line bet. Brooklyn and Flatlands; Cooper St. (or Ave.), from Broadway to Hamburg Ave.	2.443	$23,416 44
DOTTED GREEN.—Granted by town board of Flatbush, Jan. 6, 1894 (offered in evidence and marked Exhibit No. 32 N). Rogers Ave., from city line to town line bet. Flatbush and Flatlands. 39th St. from town line bet. New Utrecht and Flatbush to 13th Ave.; 13th Ave., from 39th St. to 37th St.; 37th St., from 13th Ave. to the road from Flatbush to New Utrecht; on road from Flatbush to New Utrecht from 37th St. to Church lane; Church lane from road from Flatbush to New Utrecht to Church Ave.; Church Ave., from Church lane to town line bet. Flatbush and Flatlands.	12.236	101,588 77
HATCHED GREEN.—Granted by highway commissioners, town of Flatlands, Jan. 3, 1893 (offered in evidence and marked Exhibit No. 33 N). Church Ave. from town line bet. Flatbush and Flatlands to E. 98th St.; E. 98th St. to Hegeman Ave.; Hegeman Ave. to New Lots road, and from Jamaica bay to city line bet. Flatbush and Brooklyn on Canarsie Ave. or Rockaway road.	8.623	48,981 87
Totals.	23.292	$173,987 08

136 The WITNESS: I have also map numbered D 8, showing the special franchises of the Coney Island, Fort Hamilton and Brooklyn Railroad Company. These consist of franchises granted in the town of New Utrecht and also a very small stretch in the city of Brooklyn. With the exception of the tracks on Fifth avenue, between Thirty-ninth street and Sixtieth street, the operation of these special franchises is attended by a considerable difficulty on account of the small number of people through that locality, and, taken as a whole, the franchises are not profitably operated.

The following is a copy of the memorandum attached to the map "Exhibit No. D 8," which I believe to be true, including the state-

ments of mileage and of value of tangible property in the streets, which is based on cost of reproduction new, allowing for depreciation:

	Mileage measured as single track.	Value of tangible property.
HEAVY RED.—Granted by res. C. C., July 26, 1892, over mayor's veto (offered in evidence and marked Exhibit No. 34 N).		
5th Ave., from city line (60th St.) to 37th St.; 39th St., from 3d Ave., to city line (9th Ave.).....	4.011	$57,648 16
DOTTED RED.—Granted by highway commissioners, town of New Utrecht, March 25, 1893 (offered in evidence and marked Exhibit No. 35 N).		
39th St., from city line (9th Ave., to town line, bet. Flatbush and New Utrecht (12th Ave.); 5th Ave., from city line (60th St.) to 4th Ave.; 4th Ave. from 5th Ave. to Shore road; 86th St., from 5th Ave. to 14th Ave.; 14th Ave., from 86th St. to Bath Ave.; Bath Ave., from 14th Ave to Bay 19th St..	9.353	82,811 15
Totals.....	13 364	$140,459 31

The WITNESS: I have also map numbered D 9, special franchises of the Coney Island and Gravesend Railroad Company, situated entirely in the town of Gravesend, which are operated all the year round, but which are a dead loss except during two months of the summer, and during the year ending June 30, 1900, the entire franchise was operated at a loss.

137

The Coney Island and Gravesend Railway Company was incorporated, as I recall, in 1893, or thereabouts, but its railroad wasn't constructed until about 1897. The Nassau Railroad Company then constructed the railway, or portion of it, upon an agreement whereby it was to lease the road for five years, and pay in addition to the cost of construction the sum of $150,000. In 1899 the Nassau Railroad Company became possessed of all the stock of the Coney Island and Gravesend Railroad Company and has not yet merged the company. It is operated separately and independently. The Nassau Railroad Company merely is a stockholder owning all the stock except the shares qualifying directors. When the report was made the Nassau was operating as lessee, and the assessment and report treated the two companies as one. The Coney Island and Gravesend Railway Company has been operating separately since July 1, 1900.

The following is a copy of the memorandum attached to the map "Exhibit No. D 9," which I believe to be true, including the statements of mileage and of the value of tangible property in the streets,

which is based on the cost of reproduction new, allowing for depreciation:

	Mileage measured as single track.	Value of tangible property.
HEAVY BROWN—Granted by resolutions of highway commissioners of town of Gravesend Aug. 29, 1893 (offered in evidence and marked Exhibit No. 36 N), and by resolutions of town board of town of Gravesend, Aug. 31, 1893 (offered in evidence and marked Exhibit No. 37 N), on Emmons and Neptune Aves., from Ocean Ave. to W. 8th St.; W. 8th St., from Neptune Ave. to Surf Ave.; Surf Ave., from W. 8th St. to W. 35th St. (see also rights of Coney Island and Brooklyn R. R. Co.) on Neptune Ave., bet. W. Fifth St. and Coney Island Ave.....	6.150	$52,120 13

138 In addition to the value of tangible property as shown on the memorandum attached to each of the foregoing maps (Nos. D 1 to D 9, inclusive), there is $41,748.27 worth of feeder wire located on streets not enumerated on the memorandum attached to each map.

The WITNESS: Of all these special franchises, many of which are separated, disassociated from others, the only separate franchises which are profitable in operation separately are those of the Brooklyn and Jamaica Railroad Company, shown on map D 2, and consisting of, approximately, ten miles, measured as single track, and those of the south Brooklyn Central Railroad Company, shown on map D 3, consisting of about 8.6 miles of track, measured as single track, or a total of 18 or 19 miles of single track of profitable special franchises out of a total included in the assessment of 120 miles of such special franchises. This is at the rate of about $270,000 per mile of single track; that is, assuming that the entire assessment was based upon the mileage which has a net earning capacity over and above operating expenses and interest upon the actual cost of construction, but not including any interest on bonds or guaranteed stock, or anything of that kind. That is, the operation alone did not yield revenue enoughto pay the expense of operation and interest on the actual cost of reproduction, except in the case of those 19 miles of single track. In the report of the company to the State Board of Tax Commissioners and in the assessment of the State Board of Tax Commissioners was included what is known as the Brooklyn, Bath and West End railroad, a large part of which was reported as special franchise. We have found upon investigation that almost all of this 6 or 7 miles of double track was on private right of way, and that no special franchise should be assessed against that company.

The last above sentence was objected to as incompetent, irrelevant

and immaterial; that plaintiffs are estopped by their own report; objection overruled; exception.

139 By the REFEREE:

Q. You never offered to correct this report?

A. It was not ascertained until after the certiorari proceeding was begun.

The WITNESS: This private right-of-way between Thirty-sixth street and Fifth avenue and Coney Island——

Defendant's counsel objected to any evidence that it has been assessed by the local assessors as immaterial, irrelevant and incompetent; objection overruled; exception.

The WITNESS: —consists of about 6 miles of double track, or 12 miles of single track, and the annual record of assessed valuation of real estate of corporations on file in the department of taxes and assessments for the year 1900 shows that the foundation, roadbed, sub and super structure, poles, supports, wires, cables, appurtenances and land in wards 8, 30, 31, 32, corporation No. 112. In ward 8 112–1; ward 30 112–2 to 7 incl.; ward 31 112–8 to 31 inc., are all assessed at $150,000 by the local assessors, the commissioners of taxes and assessments of the city of New York.

Q. Has the company paid the tax?

Objected to as immaterial, irrelevant and incompetent; objection overruled; exception.

A. That tax was paid.

I have here a contract, dated June 26, 1896, between the Nassau Electric Railroad Company and the Kings County Electric Railroad Company, parties of the first part, and the City of Brooklyn, party of the second part, regarding the action of one John Adamson, taxpayer, to annul the franchise of these companies and stipulating the conditions under which the action was discontinued and the enjoyment of the franchise was continued.

140 Plaintiff's counsel offered the contract in evidence.

Objected to as irrelevant and immaterial; objection overruled; exception.

Contract received and marked "Exhibit 38 N."

The WITNESS: Those percentages have been paid as required by the contract. The Nassau Electric Railroad Company, as constituted in January, 1900, had the competition of an elevated railroad structure in operation over that part of its route between Thirty-ninth street and Flatbush avenue, on Fifth avenue; over that part of its route on Liberty avenue, between Pine street and Elderts avenue, and on Adams street, between Myrtle avenue and York street It also was obliged to use the tracks of other companies not identified with its system in order to make a connection between its various franchises. It also had in independent operation, to face the competition of special franchises granted to the Brooklyn City

Railroad Company, and constituent companies, and the Brooklyn, Queens County and Suburban Railroad Company, and constituent companies; the Coney Island and Brooklyn Railroad Company and constituent companies; the Brooklyn Union Elevated Railroad Company and constituent companies.

Cross-examination.

By Mr. COMAN:

Q. The amount of the capital stock at the time in question, the amount of outstanding bonds, the rate of interest and the market value?

A. The stock of the Nassau Electric Railroad Company consists of six and one half millions of preferred stock, eight and one-half millions of common stock, fifteen millions of bonds, par value, bearing 4 per cent.

All evidence as to value of stock and bonds objected to as immaterial and improper. Objection overruled. Exception.

141 Q. What was the value of the preferred stock at that time?

A. The market price, as I recall, was about $70 or $75 a share. The common had no market value; it was owned by the Brooklyn Rapid Transit Company. The preferred stock was not guaranteed at the time this assessment was fixed. It was guaranteed since April 1, 1900, by the Brooklyn Heights Railroad Company. The Brooklyn Heights Railroad Company does not guarantee the preferred stock, but it guarantees that the rental which it pays for the lease of the Nassau Electric Railroad Company should be not less than an amount equal to 4 per cent. upon the Nassau Company's preferred stock. Of the entire issue of the preferred stock, $6,500,000, in January, 1900, about $6,054,000 was held by the Brooklyn Rapid Transit Company. The preferred stock sold at that time about 70; the common stock, the whole issue of which was $8,500,000, was all owned by the Brooklyn Rapid Transit Company, with the exception of the shares qualifying directors, and that stock had only the value immediately which comes with the control of the property, principally a nominal value. As to the preferred stock, at that time no definite arrangement which would influence its value had been made. About three months afterward a permanent lease of the Nassau Company to the Brooklyn Heights Company was entered into, whereby the minimum rental under that lease was at an amount equal to 4 per cent. upon the preferred stock of the Nassau Company. But in January, 1900, the lease had not been entered into and nothing definite had been announced as to what the terms of the lease would be regarding the rental. But the lease itself has not materially influenced the price of the preferred stock. I understand what little of it there is for sale in the market is purchasable somewhere between 70 and 80, possibly less.

Q. What would you say with regard to its value at the date I mention, second Monday of January, 1900, as compared with its value six months previously, at the time of the report?

142 A. There wasn't any essential difference.

Q. What was the value of the capital stock of the Nassau Electric Railroad Company on January 7, 1900? Was it the aggregate value of the share stock in each case? In other words, was it the multiple of the number of shares and value of each share in each case? This question is directed to the value of the capital stock as a total as distinguished, so far as any distinction exists, from the value of the share stock, so-called. This inquiry is intended to ascertain the actual value of the entire assets of the company of every nature other than bonded indebtedness on the date named.

Objected to as immaterial, improper and too indefinite and complicated to admit of an intelligent answer. Objection overruled. Exception.

A. I do not think I understand the question and I am unable to answer it.

In January, 1900, the amount outstanding of first mortgage bonds was $15,000,000 first consolidated mortgage bonds; that is a consolidated mortgage out of which provision is made for retiring bonds of the constituent companies now merged with the Nassau Electric Company. The market value at that time of the Nassau 4 per cent. consolidated bonds, I think, was about 90, but there were very few of them for sale; most of them were held by the reorganization syndicate, and they had no market value at that time.

Q. For what reason do you say they had no market value?

A. There were no sales.

Q. You simply mean there was no evidence as to what the market value was?

A. Yes.

Q. They had a value, of course?

A. Oh, yes.

Q. About what, do you think?

A. About 90, I should think.

143 Q. The remainder?

A. You refer to the underlying bonds?

Q. Yes?

A. Those had varying prices, ranging from a little below par to about 114 or 115, I think.

By the REFEREE:

Q. When you speak of underlying bonds, you mean the bonds of the other companies?

A. I speak chiefly of the bonds of the Atlantic Avenue Railroad Company and the Brooklyn, Bath and West End Railroad Company.

Q. As I understand you, there were several issues of the bonds held in the treasury of this company to redeem those?

A. About $4,500,000.

As to the value of the bonds of the Nassau Company, there were three general classes of bonds. The first consolidated mortgage

bond, which represented the general mortgage covering the entire property, under which there were outstanding somewhere in the neighborhood of ten and a half or eleven million. Those were quoted on the market at about 90. The underlying liens, of which there were about four and a half millions outstanding, were quoted at various prices, the 660,000 first Nassau mortgage bonds being quoted at about 115, the first mortgage Atlantic Avenue Railroad Company bonds selling at about the same price, the improvement mortgage bond of the Atlantic Avenue Railroad Company being quoted at 102 and the bonds of the Brooklyn, Bath and West End Railroad Company, so far as any quotations were obtainable, being about par. Those are the only underlying mortgages of the Nassau system.

(All these mortgages were offered and received in evidence.)

Q. How long after the second Monday of January, 1900, was the consolidation effected or the lease made?

A. April 1, 1900.

144 Q. I assume you are not mistaken about this, but my memorandum shows that in 1899 there was only 8,000,000 of these bonds issued and this "Financial Chronicle" states now there are only 10,000,000 issued?

A. Those are the consolidated bonds—the mortgage of $15,000,000; the amount issued, I think, is something like $10,500,000 now, and about $4,500,000 are reserved to retire the underlying bonds, but in December, 1899, an additional million and a half of bonds were issued; that is where you are confused, probably.

Q. Does your report show the assessed value of the real property of this company outside of the special franchises?

A. I think it does. I have it here, if you wish it. About $1,410,000; that includes the right-of-way of the Sea Beach Railway Company, which was acquired in December, 1899.

By the REFEREE:

Q. You are speaking now of real estate?

A. I am speaking now of real property.

By Mr. COMAN:

Q. And of private right-of-way?

A. Yes.

Q. You spoke of some franchises which you regard as of no value considered separately; I suppose the same is true of them as of the franchises of the Brooklyn City road, concerning which I examined you; they are all a part of the Brooklyn rapid transit system and are all connected by means of some lines of that system?

A. Yes; either by special franchises or by private rights-of-way; the Brooklyn rapid transit system includes a great many miles of private rights-of-way.

Q. None of them are operated separately now—independently?

A. Yes.

145 Q. What ones?

A. The Coney Island and Gravesend Railway Company, the Brooklyn, Queens County and Suburban Railroad Company.

Q. Where does that run from?

A. That includes the special franchises and private rights-of-way described in my testimony last week.

Q. Between what points?

A. It has about 45 or 46 miles of track.

Q. That is operated independently?

A. Yes, sir; at present.

Q. That is the one that you said was operated at a loss?

A. Most of it; yes.

Plaintiff's counsel read in evidence the following affidavit of E. C. Shaler, in pursuance of stipulation that it should be of the same force and effect as if Mr. Shaler were present and testifying before the referee to the statements therein contained.

STATE OF NEW YORK, }
County of Kings, } ss.:

E. C. Shaler, being duly sworn, deposes and says: That he is an engineer employed in the engineering department of the Brooklyn Heights Railroad Company, lessee of the Nassau Electric Railroad Company, and has had upwards of five years' experience in the construction of electric street surface railroads, and was on the 1st day of July, 1899, familiar with the cost of material and labor necessary for such construction.

That he has carefully computed the cost of reproducing on the 1st day of July, 1899, the various lines of the Nassau Electric Railroad Company described in the evidence of T. S. Williams, vice-president of the Brooklyn Heights Railroad Company, in the above-entitled proceeding.

146 That the figures in said evidence set opposite to the description of each of the several lines correctly state the cost on the 1st day of July, 1899, of reproducing the said certain lines, less a reasonable allowance for depreciation, based upon the length of time during which such construction has been in place.

Deponent further says that the cost of rails on a given piece of track is approximately 30 per cent. of the total cost of such construction, the balance of the cost being made up of the necessary ties, plates, labor, poles, wires, etc.

That the figures as given in the evidence hereinbefore described are based upon $27.36 per ton as the cost of steel rails, which was the actual cost of steel rails in Brooklyn on the 1st day of July, 1899.

Deponent further says that the actual cost of steel rails in Brooklyn on the 2d day of January, 1900, was $37.08 per ton, being an increase of 33 per cent. over the cost of steel rails in said evidence.

That if the cost of reproduction is to be figured upon the second Monday of January, 1900, then 10 per cent. should be added to the cost of reproduction indicated in the aforesaid evidence.

E. C. SHALER.

Subscribed and sworn to before me this 31st day of July, 1901.
C. F. HIGHAM,
Commissioner of Deeds for the City of New York,
Residing in the Borough of Brooklyn.

TIMOTHY S. WILLIAMS, recalled for the plaintiff, testified:

Examined by Mr. COLLIN:

I am vice-president of the Brooklyn Union Elevated Railroad Company and have been since about March or April, 1900;
147 the Brooklyn Union Elevated Company, as it exists to-day, consists of the former Kings County Elevated Railroad Company, the former Brooklyn Elevated Silent Safety Railway Company, the Union Elevated Railroad Company, the Seaside and Brooklyn Bridge Elevated Railroad Company, also the Brooklyn Elevated Railway Company, which was succeeded, under foreclosure proceedings, by the Brooklyn Elevated Railroad Company; at the time of this assessment, on the second Monday of January, 1900, the Brooklyn Union Elevated Railroad Company did not own the property of the Kings County Elevated Railroad Company, that company having been merged in the following May with the Brooklyn Union Elevated Railroad Company; these two companies were assessed the second Monday of January, 1900, separately; the Kings County Elevated Railroad Company was merged into the other company under section 58 of the stock corporation law in May, 1900; the Brooklyn Union Elevated Railroad Company thereby succeeded to and became the owner of all the property, rights, privileges and franchises of the former Kings County Elevated Railroad Company. The Brooklyn Union Elevated Railroad Company, succeeded, by foreclosure proceedings and reorganization proceedings, the following companies: Brooklyn Elevated Silent Safety Railway Company, whose name was afterward, by act of legislature, changed to Brooklyn Elevated Railway Company, the Brooklyn Elevated Railroad Company, the Union Elevated Railroad Company, the Seaside and Brooklyn Bridge Elevated Railroad Company. The Brooklyn Union Elevated Railroad Company was incorporated, as I recall, in January or February, 1899; it acquired its property by reorganization proceedings under foreclosure of mortgages on the property of the Brooklyn Elevated Railroad Company, the Union Elevated Railroad Company and the Seaside and Brooklyn Bridge Elevated Railroad Company; the first purchaser under the foreclosure sale was the reorganization committee, of which Fred-
148 erick P. Olcott was chairman; there was a deed from that committee to the present Brooklyn Union Elevated Railroad Company; the Brooklyn Union acquired all its franchises by this purchase and by the merger of the Kings County Elevated Railroad Company, and through Frederick Uhlman, receiver of the three constituent companies, the Brooklyn Elevated Railroad Company, Union Elevated Railroad Company, and Seaside and Brooklyn Bridge Elevated Railroad Company. The special franchises of the

Brooklyn Union Elevated Railroad Company were made up of the special franchise granted to each of those constituent companies. In the special franchises of the Brooklyn Elevated Railroad Company are included the old Brooklyn Silent Safety Railway Company and the Brooklyn Elevated Railway Company whose franchises were granted by special law, chapter 585 of the Laws of 1874.

Offered and received in evidence, and marked "Exhibit 1 B."

I have a map here which shows those original franchises.

Map introduced in evidence, marked "Exhibit E."

The part colored in heavy blue shows the original franchises of the Brooklyn Elevated Railroad Company conferred by chapter 585 of the Laws of 1874; those franchises comprise about 7.48 miles of double track, elevated railroad structure, the value of the tangible property of which in the street and public places is $1,187,674.40; that is the value based upon the cost of reproduction, allowing for depreciation, as of June 30, 1899. All of my statements of value are made on that basis. That mileage is the mileage measured on the street; that railroad structure was constructed and is operated by virtue of the franchise granted by this chapter 585 of the Laws of 1874, with this addition, that, pursuant to the authority conferred by that chapter, the common council, on May 18,
149 1885, granted an alternative route over some of the lines specified in the statute. Other special franchises of the Brooklyn Union Elevated Railroad Company were those of the former Union Elevated Railroad Company, which are shown in green on the map which I have presented; those franchises constructed are represented by 10.74 miles of double track, street measure, the value of the tangible property of which is $1,705,297; based on the cost of reproduction and allowing for depreciation and as of date of the company's report to the State commissioner October, 1899; that construction was by authority of the rapid transit act of 1875; chapter 606; a general law, the acts amendatory thereof and supplementary thereto and by resolutions of the common council of the city of Brooklyn, adopted July 12, 1886.

(Offered and received in evidence and marked "Ex. 8 B.")

Commissioners were appointed under the rapid transit act and laid out the route and prescribed the conditions under which the railroad should be constructed.

(Their report and requirements offered and received in evidence, marked "Ex. No. 9 B.")

Other special franchises of the Brooklyn Union Elevated Railroad Company were those granted to the Seaside and Brooklyn Bridge Elevated Railroad Company, comprising 2.12 miles of double track, elevated railroad structure, the value of the tangible property of which is $336,613.60; that is the value based on the cost of reproduction allowing for depreciation the 30th of October, 1899, the date of the report; those franchises are marked in heavy red on the map;

by the franchise I mean the streets on which construction was made by virtue of that franchise; those franchises of the Seaside and Brooklyn Bridge Elevated Railroad Company were obtained under the provisions of the rapid transit act, chapter 606, Laws of
150 1875, and the laws amendatory thereof and supplementary thereto; also, under resolutions of the common council, adopted February 20, 1891.

(The resolution of the common council offered and read in evidence and marked "Ex. No. 7 B.")

Rapid transit commissioners were appointed pursuant to the act, who prescribed routes and indicated the conditions under which the railroad should be constructed.

(Their report and findings offered and read in evidence and marked "Ex. No. 6 B.")

These make up all within the old city of Brooklyn of the Brooklyn Union Elevated Railroad Company, before the merger of the Kings County Elevated Railroad Company into the Brooklyn Union Elevated Railroad Company.

There was an additional franchise granted by the town of New Utrecht to the Seaside and Brooklyn Bridge Elevated Railroad Company covering that portion of the elevated structure between the old city line of Brooklyn, Sixtieth street, and Sixty-seventh street; that franchise was granted by the highway commissioners of the town of New Utrecht under date of April 27, 1891, by resolution of the commissioners.

(The resolution offered and read in evidence and marked "Ex. No. 10 B.")

The town of New Utrecht came into the city of Brooklyn several years before 1900, and in 1900, and several years before, was located in the city of Brooklyn; that special franchise is included in the part marked red as belonging to the Seaside and Brooklyn Bridge Elevated Railroad Company on this map. That completes this map except the bridge; the remaining franchises of the Brooklyn
151 Union Elevated Railroad Company, before its merger with the Kings County Elevated Railroad Company, consist of the contracts, dated June 23, 1898, and August 23, 1897, between John L. Shea, commissioner of bridges of the city of New York, and Frederick Uhlman, receiver of the Brooklyn Elevated Railroad Company, the Union Elevated Railroad Company, and the Seaside and Brooklyn Bridge Elevated Railroad Company, the benefits of which contracts, by the action of the courts, in the reorganization proceedings, passed to the Brooklyn Union Elevated Railroad Company in the transfer of title from the reorganization committee; the New York and Brooklyn bridge is a municipal structure, owned by the city of New York, and at the time these contracts were first made was owned by the trustees of the New York and Brooklyn bridge;

they held title for the city, for the two cities; it was a public bridge owned by the municipalities.

The contracts offered and read in evidence and marked "Exhibit No. 5 B."

The red represents the elevated railroad maintained and operated by virtue of the franchise originally granted to the Seaside and Brooklyn Bridge Elevated Railroad Company; it would not be practicable to operate the railroad so constructed separately and independently; those railroads would not be of any value for separate and independent operation; the railroads on the streets represented by the green lines were built and are constructed, maintained and operated by virtue of the franchises originally granted, as stated, to the Union Elevated Railroad Company.

Q. Take the railroads on the streets indicated on the map in blue, would they be of any value for separate and independent operation?

Objected to as a conclusion and not based upon any facts; objection overruled; exception.

152 Q. Take the red; would those be of any value to companies separately owning them and operating them independently of other roads, although connecting with others?

Objected to as immaterial; overruled; exception.

A. They could not be operated profitably by independent railroads or by independent managements; that is true of the portion marked in blue and is largely true of the portion marked in green; the three companies continued their independent corporation existence up to the foreclosure of which I have spoken, but were operated by one company as lessee; the Brooklyn Elevated Railroad Co.; that company went into the hands of a receiver prior to the foreclosure; I am acquainted with the recent financial history of the company.

Q. What was the financial difficulty that caused the receivership in a general way?

Objected to as immaterial and irrelevant.

By the REFEREE:

Q. When did it pass into the hands of the reorganization?

A. February, 1899; this assessment is for the second Monday of January, 1900; I have the facts and figures for that year; it didn't earn money enough to pay its operating expenses and fixed charges.

By Mr. COLLIN: It was in the hands of a receiver about a year and a half, as I recall; this company that I speak of, that didn't earn its operating expenses and fixed charges, and consequently went to foreclosure, was the Brooklyn Elevated Railroad Company, which operated as lessee the railroads constructed under the fran-

chises of the other companies mentioned and shown on this map, so that it was then operating the combined railroads constructed
153 and operated under all these franchises as one system; all the roads now operated by this company except the Kings County Company; each of these elevated railroads had under it, the entire length, an electric surface railroad, with the exception of a little branch on Lexington and Grand avenues, from the corner of Myrtle and Grand to Lexington on Grand, and on Lexington from Grand to Broadway.

Q. About how much mileage free from underneath double-track electric surface railroad by the overhead trolley system?

A. I should say, without measuring it actually, less than a mile; out of a total mileage of 20.34, double track. There had been electrically equipped, the surface railroads, since the construction of the elevated railroads; the surface lines were electrically operated after the construction of the elevated railroads; when these elevated railroads shown on this map were constructed the underneath surface railroad lines were operated by horse power, until about 1893 and the years immediately following; 1893, 1894, 1895 and 1896. When the surface railroads were operated by horse power the earnings of the elevated railroad were greater on account of the more rapid transit furnished by the elevated railroads. But as soon as the surface roads were equipped with electricity those earnings fell off very materially, on account of the competition of quicker transit on the surface. Electrical operation of surface lines was much more rapid than horse power operation. That situation has ever since continued, from 1895 and 1896. So the entire elevated system has to meet the competition of the electric surface system, immediately underneath except about a mile or so, and on parallel streets, including the double-track surface railroads of the Brooklyn City Railroad Company on Myrtle avenue, of the Broadway Railroad Company on Broadway, underneath the whole structure and continuing beyond easterly. The suburban population in the territory beyond the various termini of the elevated are brought to those termini
154 by surface lines, electrically operated, which continue underneath the elevated. That is true in all those cases, so that the suburban feeders of the elevated feed first the surface before they reach the elevated. Other competing franchises are the grant to the Brooklyn City Railroad Company on Third avenue beyond Thirty-eighth street, southerly; the grant to the Atlantic Avenue and Nassau Electric Railroad Companies on Fifth avenue, under the entire structure of the elevated railroad on that avenue; the grant to the Brooklyn City Railroad Company on Flatbush avenue; various other grants to the former Atlantic Avenue Railroad Company and to the Nassau Electric Railroad Company; also to the Brooklyn City and Newtown Railroad Company and the Park Avenue Railroad Company. By grants I mean railroads constructed under franchises—the surface railroads, electrically operated, constructed under those various franchises which come into competition with this elevated railroad system, both directly under the elevated railroad struct-

ure and on adjacent and parallel streets. The payments required by the contracts for bridge crossing that I have spoken of, have actually been made. I have not the amounts of those payments; they are the amounts required by the contracts during the year 1900 and before and since. The railroad companies have been obliged to pay very large sums to abutting property-owners for damages alleged to have been suffered by the construction and operation of the elevated railroads; by litigation, and as I recall it by the terms of some of the original franchises from both the city and from abutting owners. I do not recall the provision in this respect in the findings of the rapid transit commissioners as to that part of the road built under their findings. It is set forth in the findings of the commission. I have not the figures as to the amount of land damages which were paid in 1900. There is a very considerable number of law suits now pending for such damages. I don't recall the number of suits. I cannot give the total that has been paid to date for land damages.

155 Q. Can you state the amount of the State franchise tax, as we call it, which is assessed by the State comptroller and payable to the State treasurer by virtue of the State comptroller's assessment for the year ending June 30, 1900?

Objected to as immaterial and incompetent; objection overruled; exception.

A. It paid directly for the year ending June 30, 1899, not including the Kings County Elevated Company's tax of $6,839.49, $15,535.32, and indirectly through the lessee company $5,124.42, and for the year ending June 30, 1900, $31,253.34, and has been charged for the year ending October 31, 1900, a tax of $1,000 additional by the comptroller. That last assessment is disputed.

Cross-examination.

By Mr. COMAN:

The Brooklyn Union Elevated purchased the property and franchises of three corporations that had just passed through the hands of a receiver. Those were Brooklyn Elevated Railroad Company, the Union Railroad Company and the Seaside and Brooklyn Bridge Elevated Railroad Company; the Brooklyn Union Elevated Railroad Company paid on that sale for that property the stock and bonds of the new company. The amount of the bonds was somewhat less than twelve millions. The amount of the stock was something like between twelve and thirteen millions of common stock and three and a half millions of preferred stock, as I recall the figures, making in all something like twenty-nine millions.

By the REFEREE:

Q. That stock and those bonds were paid for the property purchased?

A. They were given to the reorganization committee in pursuance of its plan of reorganization for distribution to the old stock and bondholders.

156 By Mr. COMAN:

The old companies were unable to pay their operating expense and fixed charges; I don't recall the amount of the bond of indebtedness of the old companies; I think the total amount of interest charges was something like eight or nine hundred thousand dollars a year; that is my recollection; I am speaking now entirely from recollection; the Brooklyn Union bought this property February 17, 1899; during the year ending June 30, 1899, the earnings of that road were $2,001,404.12, and the net earnings $397,674.

Q. In what way did you arrive at the value of the tangible property; what I mean by that is, more particularly, what deductions did you make on account of depreciation; in a general way state how you arrived at it?

A. The figures were not prepared by me; they were prepared by our engineers; the figures which I have given are those which were submitted to me by our engineers and reported to the board; in a general way they took the cost of reproduction and charged a certain amount for depreciation.

Re-direct examination.

By Mr. COLLIN:

Q. With reference to the stock and bonds, how did the amount of stock and bonds issued by the new Brooklyn Union Company to the reorganization committee compare with the amount of stock and bonds of the old companies, the place of which was taken by the new, and the fixed charges on each respectively?

A. The fixed charges were very materially reduced; the bonded indebtedness was reduced materially; whether the capital stock was reduced I am unable to say without verifying from the records; as I recall, the fixed charges were reduced from somewhere in the neighborhood of $800,000 to about $480,000, as I recall it; the fixed charges were just about cut in two in the middle; in general,

157 the property acquired by virtue of the foreclosure sale and reorganization by the new company, besides the special franchises, consisting of the tangible property in the streets and the intangible right to use the street, was real estate, all the easements which had been purchased from abutting property-owners, personal property, cars, equipment, depots, car barns, all the miscellaneous property which makes up a railroad, and good-will; I was not one of the persons taking part in the negotiations for the incorporation of the Brooklyn Union Company and its acquisition of this property by virtue of the foreclosure sale; I had nothing to do with it until after the new company was incorporated.

I was not a director of the new company from the time of its incorporation, but only from about March or April, 1899.

Q. Was the financing of the Brooklyn Union Elevated Railroad Company made in anticipation of avoiding competition with the surface lines and economizing with reference to the reduction of that competition?

Objected to as immaterial; objection sustained: exception.

Q. Have efforts been made, by stopping the running of through trains and efforts to reduce the expense of operating the elevated by combination with the surface—have efforts been made to accomplish that result?

A. Yes.

Q. In connection with the East New York loop particularly?

A. Yes, sir.

Q. What has been the result of that effort, at that point, for instance, in the courts?

Objected to as immaterial; objection sustained; exception.

In fact the competition of the surface lines still continues as affecting the receipts of the elevated roads.

158 Q. Has the supreme court granted an order in a mandamus proceeding to compel this company to operate through trains where it had discontinued through train operation for the purpose of reducing expenses?

Objected to as immaterial; objection sustained; exception.

Re-cross examination.

By Mr. COMAN:

Q. Is the total amount of the bonds and stock of the Brooklyn Union Elevated Company greater or less than the total amount of the bonds and stock of the three old companies?

A. I couldn't answer that as you put it; my recollection is that the bonds were reduced; whether the stock was increased or reduced I do not know.

Q. Do you mean by that you have no recollection or that you have never known?

A. I have known, but I don't recall; these $12,000,000 of bonds are now guaranteed by the Brooklyn Heights Railroad Company; 4 per cent. guaranteed bonds.

Q. What are they worth?

Objected to as immaterial, irrelevant and incompetent; objection overruled; exception.

A. The market price is about 101 or 102.

Q. Where is the stock held?

Same objection; objection overruled; exception.

A. About four or five hundred stockholders altogether; the Brooklyn Rapid Transit Company owns the largest part of it—the controlling interest; that is not the same company which guaranteed the bonds.

Q. Have there been any sales of this stock recently in 1899 or 1900?

Objected to as immaterial and irrelevant.

159 Q. What is the value of that stock or was it in 1900, January?

Same objection; objection overuled; exception.

A. The actual value isn't very great; the market price has ranged about $20 for the common stock, and from $50 to $60 for the preferred.

Re-direct examination.

By Mr. COLLIN:

The par of the stock is a hundred dollars each share.

The Kings County Elevated Railroad Company is a successor of the former Kings County Elevated Railway Company, and the Fulton Elevated Railway Company becoming the successor by process of foreclosure of the mortgages of the Kings County Elevated Railway Company and the Fulton Elevated Railway Company and reorganization into the new company, the Kings County Elevated Railroad Company. The special franchise of the Kings County Elevated Railroad Company consisted of the special franchises of the former Kings County Elevated Railway Company and the Fulton Elevated Railway Company.

The Kings County Elevated Railroad Company, the company against which the assessment is made, was incorporated in July, 1899, and was merged in the Brooklyn Union Elevated Railroad Company in May, 1900. At the time the assessment was made it was an independent company.

The Kings County Elevated Railroad Company, the last company, did not acquire any franchise directly in its own right but only by purchase from the reorganization committee of the preceeding companies, by virtue of foreclosure sale, and a receivership. The special franchises of the Kings County Elevated Railway Company
160 were granted under general law, chapter 140, Laws of 1850; chapter 606, Laws of 1875, the rapid transit act, by the acts amendatory thereof and supplementary thereto; and by resolutions of the common council of the city of Brooklyn passed June 30, 1879. The resolutions offered and received in evidence marked "Exhibit 1 K." The conditions under which those franchises were granted are set forth in the resolutions adopted by the common council June 30, 1879, and by rapid transit commissioners June 30, 1878. The resolutions were offered and received in evidence and marked "Exhibit No. 2 K."

The franchises of the Kings County Elevated Railway Company are shown in blue on this map. They consist of 5.386 miles of a double track elevated railroad structure, street measure, the present value of which at the time of the report and which wasn't changed

on the second Monday of January, 1900, materially, was $855,189.08, that figure being the cost of reproduction, less depreciation. The franchises of the Fulton Elevated Railway Company were granted under the same general laws, chapter 140, Laws of 1850, chapter 606, Laws of 1875 and the acts amendatory thereof, and by resolution of the common council of the city of Brooklyn, passed December 10, 1878.

The resolutions of the common council offered and received in evidence and ma-ked "Exhibit No. 3 K."

The conditions and requirements attached to the grants of these franchises are set forth in the proceedings of the rapid transit commissioners, and also in the proceedings of the common council.

The proceedings of the rapid transit commissioners offered and received in evidence and marked "Exhibit No. 6 K."

The WITNESS: These franchises of the Fulton Elevated Railway Company comprise the portion marked in green on the map and consist of 3.324 miles of double-track elevated railroad struct-
161 ure, street measure, the tangible property of which was valued at the time of the assessment at $527,783.92. That is the present value based on cost of reproduction, allowing for depreciation, as of June 30, 1899. In addition to this franchise the Kings County Elevated Railroad Company has a franchise for crossing the New York and Brooklyn bridge under contract of August 23, 1897, with the former bridge trustees, and October 27, 1898, with the bridge commissioner.

The contracts offered and received in evidence and marked "Exhibit No. 5 K."

Those were executed under chapter 663 of the Laws of 1897.

Offered and received in evidence, and marked "Exhibit 7 K."

That is true also of the Brooklyn Union Elevated Railroad Company. The Kings County Elevated Railroad Company has to compete with grants to various railroad companies to build and operate railroads on adjacent streets, under which grants, railroads have been constructed on streets immediately underneath the elevated structure and on streets parallel to them. There is a double track street surface electric railroad under the entire length of the railroad of the Kings County Elevated Railway Company and under a large part of the railroad of the Fulton Elevated Railway Company. These are chiefly the double-track street surface railroads of the Brooklyn City Railroad Company, operating the entire length on the surface of Fulton street, underneath. The railroads of the Broadway Railroad Company operate from practically the same eastern terminus, and the railroads of the Union Elevated Railroad Company parallel the railroad constructed by the Fulton Elevated Railway Company. The railroads of the Nassau Electric and At-

lantic Avenue Railroad Companies operate on Liberty avenue, on a portion of which the Fulton Elevated Railway Company has
162 built its tracks; on Douglass street, a parallel street; on Bergen street, a parallel street; on Rockaway avenue, extending through the same general territory and on Cooper street, with connections to the western part of Brooklyn, through Hamburg and Central avenue. Also the railroad of the Brooklyn City and Newtown Railroad Company is operated on Fulton street, from De Kalb avenue westerly, which is a rival company to the companies in the Brooklyn rapid transit system, operates on Fulton street, from De Kalb avenue to Washington street. The Kings County Elevated Railroad Company and its predecessors have also expended large sums of money to abutting property-owners, and is required to pay a large amount annually still. It paid a large amount in 1900, and a number of litigations are still pending in that respect. These surface railroads are all electrically operated. They were formerly operated by horses as a motive power. The situation as to competition with the elevated railroad is of the same general character as in the case of the Brooklyn Union Elevated railroad.

Q. Take the railroad indicated by the green lines on the map; could that railroad be operated profitably as a separate and independent railroad?

Same objection as to similar question before; same ruling and exception.

A. It could not.

Q. Before the formation of the last Kings County Company by reorganization, how was this system operated?

A. By the Kings County Elevated Railway Company operating its own road directly and as lessee the roads of the Fulton Elevated Railway Company; the two operated as one system; the financial result of that operation was a failure, a receiver and a foreclosure; substantially the same situation and for the same causes as the other elevated railroad system, only the reduction of mortgage indebtedness was very much greater; I mean as far as the financial operation was concerned; in the reorganization the new com-
163 pany issued stock and bonds by virtue of the plan of reorganization, which were distributed to the old stockholders and bondholders of the former company; the bonded debt was reduced from something like ten and a half or eleven millions to five millions.

The REFEREE:

Q. Scaled down?

A. Yes, the rate of interest was reduced from 6 and 5 per cent. to 4 per cent.; the stock I think was materially reduced, but as to that I won't swear positively. The stock of the new company was $2,800,000 preferred and $6,000,000 I think of common; the competition of surface lines continued through 1900, and still continues.

The old Kings County Company was in the hands of a receiver, and its road was operated by a receiver, according to my recollection about two years; it just about paid its operating expenses under the receiver's management; barely paid its operating expenses; that receiver operated the entire Kings County system, the blue and red lines on the map (the map offered in evidence, and marked "Exhibit No. F"); the Kings County Company paid to the city the compensation required by the bridge crossing contracts during the year 1900; I do not remember the amount; as to the value of the franchise to cross the bridge, there is competition with surface lines in that also; the competition was so great that when the surface lines crossed the bridge in advance of the elevated lines the earnings of the elevated lines fell off very materially; the surface roads got their bridge crossing construction in operation first, and had a very sensible, material and discernible effect on the earnings of the elevated; that competition still continues to a large extent, and was in existence during 1900, and before 1900; I have the earnings for the year ending June 30, 1899.

Q. What were the earnings?

Objected to on the same grounds as to previous question, as too remote and immaterial; objection overruled; exception.

164 A. The passenger earnings for that year ending June 30, 1899, were $648,821, gross. The net earnings after paying operating expenses, but excluding any interest on construction or cost, were $6,028. These elevated railroads, both Brooklyn Union and Kings County, were almost entirely electrically equipped in 1900 with the third rail system, but not electrically operated. That equipment was only partially completed on the second Monday of January, 1900; I cannot tell what proportion. On the second Monday of January, 1900, and theretofore they had been operated by steam locomotive power. To satisfactorily compete with surface lines, and to do reasonable service, it is practically necessary they should be equipped with electricity. The total cost of equipping both elevated railroad systems for electrical operation, the entire cost of electrifying the road corresponding with the cost of changing from horse power to electricity, is about $5,000,000; that covers the entire elevated system of both companies. Without that change to electricity it cannot be operated with any substantial profit, under the physical conditions. That was the situation on the second Monday, January, 1900.

Q. In your local assessment is it the fact in the year 1900 that these elevated railroad companies practically made sworn statements and valuations of all their assets, real and personal, to the local assessors so they disclosed all of their property, real and personal, to the local assessors?

Objected to as immaterial.

The REFEREE: I will allow you to show any tax they paid or became liable for, but not in this way. The question is the amount.

Q. Have you the figures of the taxes paid during the year 1900?
A. Not separate.

165 Re-cross examination.

By Mr. COMAN:

The Kings County Elevated Railroad Company paid for the assets and franchise of the Kings County Elevated Railway Company and the Fulton Elevated Railway Company $13,800,000 in stock and bonds for all the properties of those companies: those bonds are guaranteed by the Brooklyn Heights Railroad Company.

Q. What are they worth?

Same objection to this evidence as immaterial and irrelevant; objection overruled; exception.

Q. What rate of interest do they bear?
A. Four per cent.
Q. What are they worth?

Same objection, ruling and exception.

A. Selling at 93 and 94; they run fifty years from August 1, 1900.
Q. What is the value of the preferred stock?

Same objection, ruling and exception.

A. I know of no sales.
Q. The common stock?

The same objection, ruling, exception, and the same answer.

This stock, at the time of the assessment, was all owned by the Brooklyn Rapid Transit Company.

Q. What was the value of the capital stock of the Brooklyn Union Elevated Railroad Company on January 7, 1900; was it the aggregate value of the share stock in each case; in other words, was it the multiple of the number of shares and value of each share in each case; this question is directed to the value of the capital stock as a total as distinguished, so far as any distinction exists, from the value of the share stock, so called.

166 This inquiry is intended to ascertain the actual value of the entire assets of the company of every nature other than bonded indebtedness on the date named.

Objected to as immaterial, improper and too indefinite and complicated to admit of an intelligent answer; objection overruled; exception.

A. I do not think I understand the question, and I am unable to answer it; this stock at the time of the assessment was all owned by the Brooklyn Rapid Transit Company; it has been all acquired by the Brooklyn Union Elevated Railroad Company, which has since merged the Kings County Elevated Railroad Company; the Brooklyn Union Elevated Railroad Company paid for the property of the Kings County Elevated Railroad Company, including the

former Sea View Railroad Company, which consisted of about twenty miles of track between Fulton street and Coney island, and including also an agreement on the part of the Brooklyn Rapid Transit Company to expend a million and a half dollars in converting the property of the Kings County Elevated Railroad Company to electricity, or for such other improvements as might be agreed upon, about $3,311,000 of its four per cent. bonds, and something over a million, I think, of its preferred stock, that still being subject to the $7,000,000 of bonds issued by the Kings County Company; after the period about which you are inquiring, and before the merger, the Kings County Elevated Railroad Company acquired the Sea View Railroad Company, with its two million additional bonds, which were authorized but not issued at the time of the reorganization; that included the old Brighton Beach railroad.

Re-direct examination.

By Mr. COLLIN:

The bonds of the elevated railroad companies were guaranteed by the Brooklyn Heights Railroad Company last month, so that the value of the bonds has been increased by that guaranty;
167 the values to-day as quoted in the market are not as of the period under discussion.

Re-cross examination.

By Mr. COMAN:

Q. What was the consideration for the guaranty of the Brooklyn Heights Company?

Objected to as too remote, immaterial and irrelevant.

The REFEREE: Unless it tends to show what the bonds were worth before, it is not of any importance, the claim in this evidence being this guaranty had enhanced their value and they were not worth that much before. You can give any evidence bearing upon that.

Objection overruled; exception.

A. It was one of the considerations of a permanent lease entered into between the Brooklyn Heights Railroad Company and the Brooklyn Union Elevated Railroad Company, which had acquired the Kings County Elevated Railroad Company prior to the making of that lease.

Q. What was the value of these bonds prior to this guaranty?

Same objection, unless it goes back to 1900 at least.

Q. January, 1900?

Objected to as immaterial and irrelevant; objection overruled, exception.

A. From 78 on up into the 80's.

Q. What was the highest point reached at any time before this guaranty was made?

Same objection, and further, that it covers a time too remote from the assessment; objection overruled; exception.

168 A. At the time that the announcement was made that the guaranty would be made by the heights company they went up to somewhat higher than they are selling for at present; I think 95 and a fraction.

There was no material advance prior to that announcement.

JOHN C. BRECKENRIDGE, sworn for the plaintiff, and testified:

I reside at Richmond Hill, Long island; I am general manager of the Brooklyn Union Elevated Railroad Company and have been about fourteen months; before that I was chief engineer of the Brooklyn Heights Railroad Company for about four or five years; before that I was in general engineering business; I am an engineer by profession; I had more or less charge of the construction of the elevated railroad as engineer; I have computed the values of the tangible property in the streets of these various railroads indicated on these two maps in evidence by colored lines; the present value based on the cost of reproduction, in each case allowing for depreciation, as it existed on the second Monday of January, 1900, is as follows: On map No. 2, the line marked in blue, the Kings County Elevated railroad, is 5.386 miles, the present value is $855,189; the continuation of that line marked in green, is the Fulton Elevated railway franchise, 3.324 miles, its value was $527,784, allowing for depreciation. That makes a total for what is commonly known as the Kings County line, as shown on map No. 2, of $1,382,973. On the other map, No. 1, the blue shows the old Brooklyn Elevated Railroad Company, 7.48 miles, value $1,187,674. The Broadway line, shown in green, 10.74 miles; that is the Union Elevated railroad, value $1,705,297. The Seaside and Brooklyn Bridge Elevated railroad, 2.12 miles, value $336,613, making a total of what now constitutes or what did constitute at that time the Brooklyn Elevated railroad system, $3,229,585. In each case these values are

169 given as of June 30, 1899, being the present values as of that date, based on cost of reproduction, and allowing for depreciation.

Cross-examination.

By Mr. COMAN:

These are my figures based upon my computation. I figured the percentage of the depreciation at 15 per cent. on structural work, not 15 per cent. per year, but altogether; on each system alike; it was all erected about the same time, from 1884 to 1889. In January, 1900, about one-third of the electric equipment had been put in. That was not included in my estimate of value. This is simply the structure I gave the estimate of, not the equipment. No portion of the electrical equipment which had been installed was included in my figures. The electrical equipment included 78 motor cars at $8,000 apiece. The cost of the third rail, attachments and labor

that had been installed January 7, 1900, on each system, was not considerable.

In the estimate I valued the stations. They are worth about $1,500 apiece. The foundations are built of concrete and cost $110 apiece. The spans average about 50 feet. That would give you four foundations, and the structural steel, at the time this estimate was made, was about 2.8 cents per pound erected, $56 a ton erected. In fact, there was a piece of work built in connection with the elevated road that cost that amount of money. That was being built just at that time and that is what we based that price on. The foundations at $110 apiece includes the cost of excavations—everything.

Q. Is the cost of excavation always the same; isn't it dependent upon the pipes you may strike underneath the surface and a number of conditions?

A. The contractor takes the risk of that; that was the bid price.

Q. For the whole?

170 A. They varied; some of them are about $88, I think.

Q. Weren't there special prices where they had bad foundations?

A. Where the foundation wasn't good and they had to go down to what they call the sub-pier they got so much a yard for that. There was very little of that. That item cuts very little figure in the reproduction of this entire system; it is sandy soil all over Brooklyn and the foundation is good except where you get a bad bottom.

Re-direct examination:

Q. This $5,000,000 spoken of for equipping the elevated with electricity is almost entirely required for power houses and cars. The old rail was worth in January, 1900, $9 or $10; it varied from $8 to $12, I suppose, during the period. Take it at $10 a ton, the material of it would be worth $563 a mile; the total mileage of the elevated system, double track, is 29.05 miles. We take the old rail out of the track and lay it one side and put new rail down and lift this old rail up on insulators for a third rail; the value includes that of the insulators and bonding and labor. The additional third rail equipment made up to January 7, 1900, and not included in the estimates of tangible property either in the reports made or in any previous evidence of valuations was 83,800 feet, the value of which on January 7, 1900 was $20,110. On account of the rise in the price of iron and steel between June 30, 1899 and January 7, 1900, fifteen per cent. of the total valuation of the tangible property in the streets belonging to the elevated companies should be added to the value as of June 30, 1899, to make the value as it was on January 7, 1900.

(NOTE.—The following testimony of Mr. Priest was taken for all cases, including this case, on July 2, 1901, and recorded in the Metropolitan Street Railway Company case, and is part of the record in this case, according to stipulation.)

171 GEORGE E. PRIEST, sworn for all the plaintiffs, and testified:

Examined by Mr. PAGE:

Q. How long have you been a State tax commissioner?
A. I was appointed on the 14th day of April, 1899.
Q. Have you participated, as president and as a member of the State Board of Tax Commissioners, in making the assessments of the various relator companies for the year 1900?
A. I did; all of them.
Q. In making the assessments against the several companies, do your assessments as made include an assessment for the value of the intangible franchise and an assessment for the value of the tangible property connected therewith?

Objected to upon the ground that the assessment speaks for itself. The law directs what the commissioners are to do and their official act speaks for itself. On the further ground that the commissioners cannot be examined upon that question as to what they actually did and cannot be recalled in reference to that.

The REFEREE: Have you any authority for that?
Mr. FIERO: Yes, sir; I think I have abundant authority.
The REFEREE: We are bound to assume they have included everything the law requires in making their assessment, but if you insist upon the question you can put it.

A. The values which we found were the values of the tangible property in the streets, together with the right to have and to use the real property.

By the REFEREE:

Q. You assessed the value of both?
A. We found the two together, the value of the tangible and the intangible, as the law directs.

172 Mr. HILL: I think we had better strike off "as the law directs."
The REFEREE: Strike out "as the law directs."

By Mr. PAGE:

Q. In case of the Metropolitan Street railway, in which case the assessment, including the tangible property, has been fixed by the board at $18,377,911, are you able to state what portion of that assessment constitutes the value of the tangible property included in that amount?

Objected to upon the ground that the tax commissioners, being judicial officers, cannot be examined as to their acts; that their acts speak for themselves and they cannot be interrogated or examined as to the manner in which they arrive at the asssessment or as to how the assessment is made up; after argument the objection was overruled; exception.

A. No; I am unable to differentiate.

Q. In respect to the various other companies, Mr. Priest, the assessments of which are before us in this proceeding, do you make the same answer to a similar question?

Same objection, ruling and exception.

A. I do; yes, sir.

Q. These assessments were made by the board, were they not, at the time they were finally arrived at; I refer now to the various assessments which were made by your board in the case of these various railroad companies which we are now considering; the various assessments which were finally entered upon your rolls were assessments which were fixed by the entire board?

A. Yes, sir; by the three commissioners.

Q. You were present when these various assessments were made?

A. I was, in each and every case.

Q. Was there any differentiation made?

173 A. As between the tangible or intangible?

Q. Yes?

Same objection, ruling and exception.

A. No, sir; there was not.

Q. The Metropolitan street railway, Mr. Priest, specifies in its return some eighteen several franchises; I now refer to Schedule C; when your assessments were made in the case of that company did you consider separately the several distinct eighteen franchises or did you consider all of the franchises together in arriving at your assessment?

Same objection, ruling and exception.

A. Won't you be more definite in that question, please; do you mean as to any one of these constituent lines?

Q. No; I am speaking of the Metropolitan Street Railway Company?

A. The system as a whole?

Q. No; I now lay before you an exhibit, which is known as Exhibit No. 61, and that shows the lines which are owned by the Metropolitan Street Railway Company; I differentiate between the expression "company" and "system;" there are here eight distinct colors, but, according to the return, these constitute all together fourteen franchises; now, I ask you, in fixing the assessment upon the franchises of this system, did the board assess each franchise separately or did you assess all the franchises of the Metropolitan Street Railway Company together; again I discriminate between "system" and "company;" I now mean the forty-seven miles of track owned by the Metropolitan Street Railway Company, and which track extends over eighteen franchises?

Objected to on the same ground, and, further, that it appears by the assessments as to what was assessed, and the evidence is incompetent and improper; objection overruled; exception.

A. The certificate of valuation found by us would show that, I think, which you have in mind.

174 Q. The assessment against the Metropolitan Street Railway Company is $18,000,000?

A. You are speaking of the Metropolitan railway?

Q. Yes; that company owns eighteen franchises, acquired at different dates?

A. If that valuation is certified by us at $18,000,000.

Q. Does that indicate to your mind in assessing them you took them all as one franchise?

A. Yes; that was taken as one franchise, if that is the total of the valuation of that line.

Q. With respect to the various other companies whose assessments are now before the court in this proceeding, do you make the same answer to a similar question, namely, where there is one assessment in your return or in the record in case of one company that indicates all the several special franchises of that company were assessed as one franchise?

A. Yes; if I understand the question, that is the answer in each case.

Q. The Broadway Surface Railway Company, or the Broadway Surface Company franchise, which is one of the franchises of this company indicated upon this map, runs from the Battery to Fifteenth street; this distance of several miles is a part of the forty-seven miles constituting the entire mileage of that company; in fixing your assessment did you put a separate valuation upon this Broadway surface line, which runs from the Battery to Fifteenth street, or did you include the valuation upon this franchise with the valuation which you put in the aggregate upon the various franchises of this company?

A. I think we found that valuation, the Broadway and Seventh avenue—if I may see the report, please (referring to the report).

Q. The different franchises of this system are represented here in eight colors; altogether there are eighteen distinct franchises; as I understand it, you assessed or made one assessment against

175 all the railroad lines which are represented upon this map, understanding that they are all the lines owned by the Metropolitan Street Railway Company, and constituting in the aggregate some forty-seven miles?

A. Yes, as reported; we fixed the valuation upon these constituent companies as they were reported, if that answers it.

Q. Unless there was, and unless there appears upon your assessment-rolls, a separate assessment for each separate franchise, you did not, in arriving at your valuation, fix a separate assessment?

A. No; it was treated as the one franchise even though there might have been several in the same line, if it was reported to us one constituent company.

Q. Did the board, in making this assessment, consider that all of

the lines owned by the Metropolitan Street Railway Company were connected?

Same objection, ruling and exception.

Q. That is to say, the Broadway line shown upon this map, which is owned by this company, stops at Fifteenth street and begins again on Broadway at about Sixty-sixth street, there being no railway franchise owned by the Metropolitan Street Railway Company for the road which runs from Sixty-sixth street along Broadway to Fifteenth street?

A. Your question is, whether we consider that as contiguous mileage or not?

Q. Whether in making this assessment of $18,000,000 upon these railway lines here you assumed there was a connection and continuous route on Broadway through its entire length from the Battery to One hundred and sixth street?

A. We had the exact mileage of it as reported to us by the company; I can't recall that detail now.

Q. It being the fact that the Metropolitan owns no franchise
176 between Fifteenth street and Sixty-sixth street upon Broadway, did you consider that they had the right, acquired from the other companies, to operate a continuous line from the Battery to One hundred and sixth street?

A. If they did have such right it was considered by us at the time.

Q. You did consider the fact that this company operates a continuous line along Broadway, from the Battery to One hundred and sixth street?

A. Yes, sir; I think that would be true.

Q. Did you consider, or did the board consider whether or not the Metropolitan Street Railway Company owned the right to run on Broadway, from Fifteenth street to Sixty-sixth street, or whether they leased the right?

A. Yes, sir; that was considered.

Q. What effect was given to the consideration which you now refer to?

Objected to upon the same grounds as heretofore, and that the inquiry cannot be made of the commissioners as to their mental attitude toward any of these questions.

The REFEREE: The question is what they did.

Mr. FIERO: That I don't object to.

Q. Did you consider that the franchises of the Metropolitan Street Railway Company were more valuable or less valuable by reason of the fact that they had acquired the right from other companies to run on Broadway, from Fifteenth street to Sixty-sixth street and does give continuous roads the entire length of Broadway?

Same objection; objection overruled.

A. I have no recollection of the operations of my mind at that

time, but as a general proposition I should say most certainly that would have been the view taken of it.

177 Q. Was this same rule applied in case of the assessments which you made with respect to the various [illegible] railway companies in New York which you assessed?

A. Whether they were continuous lines owned by the company or whether the connection was made through lease of other companies?

Q. Exactly?

A. Yes; it would seem to me they would be more valuable because being made continuous.

Q. In making these various assessments, did you consider in all cases whether or not one company had a contract with another company to run over its lines?

A. Yes; we had copies of those contracts, I think.

Q. Did you regard that as an appreciating circumstance or a depreciating circumstance in your valuation?

A. Well, where they guarantee very large dividends it would be hard to tell which would derive the greater benefit, if that be the object of the inquiry?

Q. In case of companies which had contracts to use the lines of other railroad companies, did you regard that contractual arrangement as valuable to the company possessing it?

Objected to as indefinite.

A. They both possessed it.

Q. That is to the operating company which operated over the lines of the other company?

A. Certainly I should hold that of value.

Q. You did regard it as of value?

A. Certainly we regarded it as of value.

Q. Did this consideration enter into the assessment which the board placed upon the various special franchises of each company?

A. We endeavored to consider all the elements, including this one.

178 Q. That was an element which, in the judgment of the board, added to the value of the special franchise, did it not?

A. I would like to answer that question intelligently, but first I must understand it.

Question repeated.

A. The fact of their having control and operation of these leased lines, is that it?

Q. Exactly?

A. Yes, it did.

Q. Is that true in case of each company which had a contractual arrangement with another company, namely, that this contractual arrangement was regarded as valuable and you so considered it in making the assessment upon the special franchise of each company?

A. Yes, the nearer it became an entirety the greater the value.

Q. Did you consider, in making your assessments, a map show-

ing the entire system of the Metropolitan Street Railway Company?

A. We had such a map and used it.

Q. Did you, in fixing your valuation of the special franchises of the Metropolitan Street Railway Company, consider that this was one system operated as a whole as differentiated from these several franchises as operated by the several companies owning the same?

Same objection, ruling and exception.

A. Why, we fixed the valuation upon these constituent companies as they were reported to us on June 30, 1899.

Q. Did the board value the franchises of all the companies comprised in the Metropolitan Street Railway Company system as undivided parts of an entire system or several companies operated or controlled by one company?

A. No; where they were reported as an independent property by the Metropolitan they were so treated and valued by the board.

179 Q. Did the board personally view the various lines with respect to which reports were made by the Metropolitan Street Railway Company?

A. I never viewed it all personally.

Q. Did any other member of the board, so far as you know?

A. Not to my knowledge.

Q. In arriving at the assessments which were placed upon the various franchises of the component companies of the system was there any discussion or consideration of the various special franchises owned by each company?

Objected to as incompetent.

The Referee: I will exclude that.

Question withdrawn.

Q Did the board, in valuing the various franchises of these various companies, take into consideration, among other matters, the market value of their securities; that is to say, their stocks and bonds?

A. Yes, sir; the market value of those securities, the capital stock and the bonds were considered as they were reported in the "Financial Chronicle" of January 7, 1900.

Q. Were these various figures aggregated together so that you had before you at that time a sum total representing the market value of all the securities, stocks and bonds of the system?

A. Yes, sir; they were so aggregated.

Q. This market value was a figure that exceeded $100,000,000 in amount, was it not?

A. Considerably more, if my recollection serves me.

Q. Do you recall what the figure was?

A. Yes, sir; it was, in my recollection, it was somewhere between $150,000,000 and $160,000,000.

Q. Was this regarded by the board as an appreciating or a depreci-

ating element in making their assessments upon the various several franchises?

180 A. If I may be permitted to say, it was simply taken for what it might be worth; it wasn't accepted as conclusive or as an absolute measure of value.

Q. But it was accepted as showing that they, that is, the special franchises, were very valuable, was it not?

A. Yes, we took it as an element, a factor, for what it was worth?

Q. Did the board at this time, when you had this figure before you, make any deduction from the total referred to as amounting to $150,000,000 or $160,000,000, starting with that as representing the value?

The REFEREE: He has not said he started with that as a basis.

A. I didn't state that; I stated we took that as one of the elements for consideration.

Q. Did you at any time, in making these special franchise valuations, start with that as a basis?

A. No; it was given consideration; I can't say it was a ground or a basis, but it was considered among the other elements.

Q. What other elements were considered by the board at this time in connection with the market value?

A. The earning power of this property as reported to us by the company.

Q. When you say the earning power, do you mean the earning power of the system which had stocks and bonds aggregating a market value of $160,000,000?

A. Yes; or where they were separately reported to us in their report of June 30, as they were in several instances, they were separately considered.

Q. But unless they were separately reported you did not consider, did you, the earnings from each separate franchise by itself?

A. No, we couldn't do that, unless it was set forth.

Mr. HILL: That is not an answer to it.

The REFEREE: As he takes it down it is an answer. He says no, he couldn't.

181 Mr. HILL: We ask to strike out the answer.

Mr. PAGE: Everything after "No," as being irresponsive.

The REFEREE: Strike out everything after "No." It is an explanation that is of no account.

Q. What other elements did you have before you in making your assessments and valuations?

A. We had first the report of the corporation, the original report, to which there were subsequently supplemental or special reports, as we called them; we availed ourselves of the State railroad commissioners' reports, the records of the State comptroller's office; we had the reports of the New York city department of assessment and taxation; we had the information of the experts retained by our board on behalf of the State and of our confidential appraiser and

special agent; we had Poor's Manual; we had the "Financial Chronicle."

Q. Did your board call for any information with respect to each specially granted franchise owned by each company?

A. I don't recall now; we had some correspondence with your company; the records would show; that would be included in the return.

Q. The reports, namely, the principal report, containing questions requiring information, and the two supplemental reports, contained all the statistics which were asked for by the board of the various companies?

A. No; I think there was a letter also; I am not sure; perhaps not in this company's case.

Q. You have given us the various matters which you considered in arriving at your assessment; did you, in connection with other matters and other information which was laid before you, consider the opinion of Mr. Fiero, submitted to the State Board of Tax Commissioners September 28, 1899?

A. We did; yes, sir.

182 Q. In making your assessments were you governed, or was the board governed, by the principles which are laid down as proper principles to be applied to the matter in hand by Mr. Fiero in this opinion?

Objected to as incompetent; objection sustained; exception.

Q. I show you a document entitled "Assessment of special franchises," submitted to State Board of Tax Commissioners September 28, 1899; is this paper one of the papers which was before the board in making its valuations and in fixing the assessments of the various railroad companies?

Objected to as immaterial; objection sustained; exception.

Q. Having before you the documents and papers and information to which you have referred, will you please state the method which was applied by the board in arriving at the several assessments?

Objected to upon the ground that the evidence is not competent under the decision of the appellate division, and on the same grounds as before; objection overruled; exception.

A. If you mean by "method" the rule, a fixed rule, there was none applied; each property was treated individually and upon its own conditions.

Q. Selecting now the Metropolitan Street Railway Company, the map of which is now placed before you, will you please state what method was adopted by the board in fixing the assessment of the Metropolitan Street Railway Company at $18,377,911?

Same objection, ruling and exception.

A. All of the elements, factors and considerations which we had been enabled to gather were considered by the three commis-

183 sioners, and their minds seldom met at the beginning; this valuation was the result of very much discussion, as were most of the other important—I cannot tell you what was in the minds of the other commissioners, nor, indeed, after making each year some 5,000 valuations upon these franchises, can I tell you even vaguely what passed through my own mind at the time of the making of this particular one; but undoubtedly the report of the company was made the basis.

Q. Was there any rule adopted in the case of this company; you have stated, as I understood you, that the rule varied with the different companies; but was there any rule or principle adopted by the board in making this assessment of the Metropolitan Street Railway Company?

Same objection, ruling and exception.

A. No, sir; there was no fixed rule.

Q. Did you arrive at this result as being a fair value without the application of any specific rule?

A. Yes; the board as a whole agreed that was a fair valuation.

Q. Did you consider, in fixing your valuations, the rules or principles applied for assessing franchises in other States?

Objected to as too indefinite and general; objection sustained; exception.

Q. Are you able to state, with respect to this particular assessment, whether or not this assessment was arrived at without any examination by the board of the lines operated by this particular company; that is to say, the lines which are assessed at $18,000,000?

A. Do you mean by personal visitation to the property?

Q. Yes; by the board or any member?

A. The board did not, or any member, to my knowledge, personally visit the line.

Q. Did you arrive, or in making these various assessments deduct from the amount before the board the funded or bonded indebtedness of the various companies?

184 A. No, sir; we did not.

Q. Was no deduction made in the case of any company which was assessed by you, or was no deduction made from the proposed assessment of any company which was assessed by you for its amount of funded or bonded debt?

A. No, sir; we considered that as an element of value, if considered at all.

Q. Did the board take into consideration the tax rate fixed upon real estate in the several counties in which these various companies' lines are located?

A. It did.

Q. Will you state in what way they took into consideration the tax rate?

A. It was considered; I can't tell you in just what way.

Q. Take the Metropolitan Street Railway Company, which is lo-

cated in New York county; did you take into consideration the tax rate in New York county?

A. Yes, sir.

Q. What use did you make of the tax rate which prevails in New York county in arriving at this assessment?

A. It was one of the questions submitted in the blank printed report to which answer was made, and like the answers to all the interrogatories in this blank it was considered; one of the elements in this case.

Q. Will you now state in what way you valued the tangible property connected with the use of the special franchise owned by this company?

Same objection; objection overruled; exception.

A. The value of the tangible property was reported to us by the company, and it was also valued by our experts and appraisers.

Q. You made no personal valuation of it as a board?

A. We didn't personally visit it and fix a value.

Q. Are you able to state whether or not the valuation which was placed upon this property (I refer now to the tangible property), was based upon the cost of reproduction or replacement of the tangible property connected with each special franchise?

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A. Yes; it was based upon what we termed the present value, or the value of the property at that time; perhaps I should say in explanation that although these reports were of a date as of June 30, 1899, these valuations found by us should be considered as of the date of January 7, 1900; these New York County valuations and the tangible was considered of the value at that time.

Q. Was this valuation based solely upon the cost of reproduction so far as you recall it?

A. Yes; cost of reproduction; this present value with an allowance for depreciation in the property, the age being stated, etc.

Q. Have you any figures—has the board any figures which show the amount at which the tangible property connected with each special franchise was valued?

A. I think not, except the report of the company.

Q. So that in making these assessments against each company, as I understand you, you fixed a certain figure as covering the value of the tangible and the intangible property together?

A. Yes, sir.

Q. And no rule or principle, or general principle was adopted in the making of these various valuations?

A. There was no fixed rule.

Q. Were the net earnings of the companies taken into consideration by the board in fixing these assessments?

A. Both the net earnings and the gross earnings.

Q. If the net earnings were large, the assessment was correspondingly increased as compared with a company the earnings of which were less?

A. I think I may say yes, because they would measure the earning power of the special franchise.

Q. Then the earning power of the franchise was primarily the consideration which the board adopted in fixing its several assessments?

A. I will answer by saying it was a very important factor in the minds of the board.

186 Q. Was there any factor more important or more controlling than that, except the market value of its stock and bonds?

A. No; I think there was no element more influencing the board than the earning power.

Q. As I understand you, the board adopted the rule of considering the earning power and the market value of the stock and bonds of the several companies as the most important considerations of an appreciative character in fixing the assessments of the various companies?

Objected to as not fairly stating what the witness has said.

A. If you will say "important elements" I will answer in the affirmative.

Q. Were they not in point of fact more important than any other elements as considered by the board in fixing its assessment?

A. In this case of a road being actually operated I should say they were two very important elements, but there were cases in which we found franchise valuations where there were no earnings and very slight showing of market value for securities; so I can't answer generally.

Q. I do not ask you generally, but I now refer to the companies composing the Metropolitan Street Railway Company system and the other companies in the city of New York?

A. They were two very important factors in the consideration given the properties by this board.

Q. Were there any other factors of equal importance in arriving at the value of these various special franchises on the part of the board?

A. Not that I now recall.

Q. In assessing these various special franchises, did you consider that a surface railway which had changed its motive power from horse power to underground electrical power was more valuable after the motive power had been changed than it was before the motive power was changed?

A. Yes; that would be evidenced in the receipts.

187 Q. Do you make the same answer in case of horse railways which had been changed to cable or which had been changed to the overhead trolley system of electricity?

A. I think my former answer would cover that, that it would be measured by the earning capacity, and certainly, whether cable or electric road, would certainly have greater earning power than if it had only horses as motors.

Q. Did you, in case of any companies of the Metropolitan system or any company in the city of New York, take into consideration the percentages in the nature of a tax which were already being paid by the companies to the cities?

A. Yes; they were reported to us and were considered as a part of the report made to us.

Q. Were they capitalized in any case to show what the value of the property was that could pay taxes to that amount?

A. No; I don't think they were, because it was immaterial, because from the tax based upon any valuation we might find those burdens would be deducted.

Q. Did you not consider, in case of the Broadway Surface Company, the Broadway and Seventh Avenue Company, did you not consider the fact that it had agreed and had paid to the city $150,000 a year as license fee or tax to the city, a fact indicating or a fact bearing upon the large value of that franchise?

A. Yes, sir; we did give weight to that fact.

Q. So that, in all cases where a company had agreed to pay a heavy percentage to the city of its gross receipts and had paid those percentages to the city, that was taken into account as indicating that that particular franchise was valuable?

A. Yes, sir; that is true.

Q. Valuable in proportion as it had agreed to pay to the city a greater or less percentage of its gross receipts?

188 A. Yes, sir; you may go further and say we applied the same gauge to the list made of the Madison Avenue line, the Fourth Avenue line.

Q. Will you kindly explain what you have in mind?

A. That is in line with the questions which you have just been putting.

Q. My question; will you kindly go a little further into that line and explain it?

A. Certainly, if you wish it.

Q. If you will?

A. It is my recollection that the 17 miles of road was leased by the Metropolitan system of the Harlem; that it was to pay something like $360,000 a year for eight years; thereafter, I think something like $400,000, and that was taken somewhat as the measure of the value of that franchise, it being a franchise pure and simple, it previously having been a horse road and converted to an electric road.

Q. The greater the sum agreed to be paid under the lease in such case as that the larger the assessment which, in the judgment of the board, was placed upon the line covered by the lease?

A. Yes, sir.

Q. The various valuations of the various franchises are in irregular figures; that is to say, they are not in hardly any case round figures; is that due to the fact that any special system was applied?

A. No, sir; it represented the fact that we had difficulty in arriving at the sum.

Q. Was the amount of money agreed to be paid by the Harlem Company under this lease the most important factor as regarded by the board in fixing this assessment upon this line?

A. I think it was a great aid to the judgment of the board in arriving at a valuation of that particular line.

Q. In cases where there was a lease of a line, as in that case, did the board pay any special attention to the gross earnings of
189 that particular road as distinguished from the amount of money that had been agreed to be paid under the lease?

A. To which did it attach most importance?

Q. Yes; in case of that road; was it not the fact that the value of the lease, or the amount of money agreed to be paid under the lease, was the controlling consideration in assessing that particular franchise?

Objected to as incompetent; objection sustained; exception.

Q. You have stated in one of your prior answers that you had great difficulty in arriving at a valuation of these various franchises; will you state from what considerations the difficulty arose?

A. The difficulty arose from making the minds of the three commissioners meet.

Q. Did you find any difficulty in the subject with which you had to deal, namely, the valuing of a special franchise of an intangible character?

A. No; I think the same difficulty would have arisen on the tangible possibly, the difficulty of making three pretty firm minds meet.

Q. Did the board take into consideration, in arriving at the value of these special franchises, the entire value of the corporate assets of the company?

A. Yes, sir; they were considered.

Q. Were they considered as an appreciating factor where they were large in amount?

A. Yes, sir.

Q. Did you deduct the indebtedness of the corporation in any case for the purpose of arriving at the value of its taxable assets?

The REFEREE: He stated they did not deduct.

The WITNESS: If there were bills payable they would be considered, of course.

190 Q. Did you take into consideration for any purpose in valuing these special franchises the power-houses and real estate off the line of the road?

A. Yes, sir.

Q. Where the company had or owned a large power-house, was that regarded as evidence of the fact that the special franchise of that company was more valuable than the case where a company had no power-house?

A. No; it was not considered for that purpose.

Q. For what purpose was it considered?

A. As showing the total assets of a corporation property outside the street and property in the street.

By the REFEREE:

Q. Do I understand you to mean that it was considered as part of the tangible property?

A. Well, not for the purpose of our valuation, because we had to value only that tangible property which was in the street, together with the right to have and use it there; but it would be represented in the total assets of the company—the property outside of the street, of course, would be included in the capitalization of the company as well as its personal and other property.

By Mr. PAGE:

Q. At the time the first assessment was made in the case of these various companies the Third Avenue Railroad Company was in financial difficulty, was it not?

A. I think so; yes, sir.

Q. The Metropolitan Street Railway Company, as indicated by its return, was in a highly prosperous condition, was it not?

A. Yes, sir; I think so.

Q. Did the board, in fixing the value of the special franchises of the Third Avenue Company, take into consideration the fact that the company at that time was in financial difficulties and that its earnings were comparatively small?

A. It did; yes, sir.

191 Q. So this circumstance, to wit, the financial difficulties in which the Third Avenue Railway Company was then in—was this a consideration which operated in depreciation of the amount which was fixed by the board upon its special franchises?

A. Yes, sir; I think a lesser valuation was fixed than would have been under more favorable conditions.

Q. The Metropolitan Street Railway Company operated its system by transfers at various points of intersection with the lines of other companies; was this fact regarded as a circumstance which enhanced the value of the property generally?

A. It was considered as a factor, its transfers.

Q. Of an appreciative character in the fixing of the assessment?

A. If it increased its business that would be evidenced in its receipts.

Q. This consideration took place whether or not the transfer was between lines owned by the same company or between lines owned by different companies so long as they were operated as a part of the general system?

A. Yes, sir.

Q. Is what you have said now with respect to the Metropolitan Company and the transfer situation equally true with respect to the other street railway companies in the city of New York?

A. It is; yes, sir.

Q. Before the lease the Harlem line was operated as one company

and gave no transfers; since the lease it has been operated as a part of the Metropolitan Company system, and cars have been run continuously over its line and over other portions of the Metropolitan Company system; was the circumstance that the business of the Harlem line has increased under this new arrangement one which, in the judgment of the board, increased the value of that special franchise?

A. The latent value of the franchise may have been there
192 all the time, but it is certainly being better developed under present management than theretofore.

Q. The new management was taken into consideration in fixing the assessment upon the Madison Avenue line, was it not?

A. The measure of the valuation found by the board upon that franchise was largely the measure fixed by the Metropolitan system itself in that sum which it paid for it in rentals.

Q. Didn't the fact that after the lease it was operated by the Metropolitan Street Railway Company add, in the judgment of the board, to the value of that special franchise?

A. Yes, sir; I think it did.

Q. Is it not a fact that these various special franchises, when this subject came up for consideration before the board, that the special franchises operated by each company which were assessed were regarded as parts of an undivided system operated as a whole?

A. As parts of a whole, they were so considered; yes, sir.

Q. Is it not a fact that the board, in arriving at these various assessments, from the want of any general rule which would apply in all cases, did in each special case assess the special franchise against the company owning the same at what the board thought was fair?

A. Yes.

Q. Isn't it the fact that the board was unable to devise or find any general rule or principle to adopt in making these various assessments?

A. That is true.

Q. Isn't it the fact that the board was, in the nature of things, constrained in most cases to conjecture what it thought would be the fair value of these special franchises, of taking into consideration those matters which you have heretofore mentioned?

A. I think all assessment is far from an exact science; I
193 am not willing to answer these were guesses or conjectures.

Q. Was there a special method which you found you could apply and with which you could figure out the assessment in any particular case?

A. If you mean by that a rule such as taking any certain percentage of gross or net receipts, no; it would make large and valuable franchises pay ridiculously small taxes; it would crush out the smaller franchises throughout the State.

Q. For that reason you did not apply that rule?

A. We did not apply that rule.

(Mr. HILL:)

Q. Did not apply any general principle?

A. Any general rule.

Plaintiff's counsel, Mr. Page, offered in evidence the document marked for identification this day, the report of the State Board of Tax Commissioners of the State of New York, dated January 25, 1901.

Objected to upon all the grounds heretofore stated to the reception of the table of valuations, and as irrelevant.

Plaintiff's counsel, Mr. Page, offered in evidence the first twenty-nine pages, being the portion from which particulars have been read.

Same objection.

The REFEREE: I suppose the report is only competent so far as it states facts bearing upon any issues here.

Mr. HILL: And throws light, their recommendations throw light upon what has already been done, as your honor will see when we come to argue the case.

Mr. FIERO: That the people are not bound by their recommendations?

Mr. HILL: That is a different question.

The REFEREE: I don't see how a mere recommendation or argument or anything of that kind in their report is competent so
194 far as it states any facts bearing upon these issues; it is probably competent under my ruling.

Mr. FIERO: Those matters we would like to have them offered separately so that we can get the benefit of an exception to them.

Q. In valuing the property here in the State of New York, was any consideration given by the board to the question of whether or not the assessment under the special franchise law against railroad companies in New York city was unequal or not as compared with other real estate in the city of New York not constituting special franchises.

A. I don't understand the question.

The REFEREE: I don't see how it is important; they return they have assessed these franchises at their full value.

Q. You have returned all these special franchises assessed at full value, have you not?

A. That was our intention at the time of making the valuation.

Q. Your return was correct in that particular; you have returned you assessed these special franchises at their full value?

A. It was our intention of doing it at the time of making the valuation, making a full, fair value.

Q. In the city of New York and in the other counties of the State, real estate is not assessed in all cases at its full and actual value is it?

Objected to on the ground the witness is not competent.

Question withdrawn.

Q. You signed this report, did you not, that was made to the legislature this year, dated January, 1901?

A. I did; yes, sir.

Q. This report contains this statement: "The law should authorize and direct this board to equalize, after hearings special
195 franchise valuations found by it to conform with the local assessment of other real estate in the tax district where special franchises exist, upon such proofs and information as the board can obtain. Such authorization will afford the warrant of law for supplying a remedy in the first instance to corporations. The corporations are now compelled in every case, involving great or small amounts, to resort to a court proceeding for a reduction which this department may be willing to admit is equitable, but is not by the law, in its present reading permitted to make;" you recall that statement, do you not?

Objected to as incompetent; objection sustained; exception.

Q. You are familiar, are you not, with tax matters generally through the State; you have no other business that engrosses your time?

A. No, sir; I surrendered all other business save this for the last two years and a half.

Q. Your time for the last two years and a half——

A. (Interrupting.) Has been exclusively devoted to this business.

Q. You have investigated the tax rates in the various counties of the State?

A. I have; yes, sir.

Q. You are familiar with the ratio which prevails between actual value and assessed value in various counties of the State?

A. I have aided in fixing such percentages, the tables for the last two years.

Q. This fixing of percentages to which you refer proceeds upon the ground, does it not, that the actual value of the property in the various counties differs from the assessed values?

A. That is true.

Q. Is that the fact?

A. It is the fact.

196 Q. Is it the fact in the city of New York that the actual value differs from the assessed value?

A. We so find officially.

Q. In your judgment, I mean, as a tax expert, spending all your time in the investigation of matters and statistics relating to taxes throughout the State?

A. In my judgment they are not assessing property in New York city, or New York county, at its full, fair, actual value of full 100 per cent.

Q. For the year 1900, what was the relation between assessed

value and the actual value of property in the county of New York; I now refer to real property?

Objected to upon the ground it cannot be proven in this way; it can only be proven by showing the actual value and the assessed value; the evidence is not competent; it is simply a conclusion.

Mr. PAGE: Mr. Priest is the highest tax official in this State. For two years and a half he has spent all of his time in investigating this subject and noting else. He says he has personally investigated this matter in New York county and all other counties of the State.

The REFEREE: If he can answer that as a fact, he can answer it.

Mr. FIERO: After all, it is a mere matter of opinion. If you would call Mr. Feitner, who is the tax commissioner down there, he might say it was assessed at 120.

The REFEREE: We will assume he has investigated it and ascertained the real value and the assessed value of properties down there; perhaps you had better ask him that question first, whether he has ascertained by investigation the real and assessed values of the property.

Q. Have you ascertained by investigation the real and assessed values of property in the city of New York?

A. Yes.

197 Q. What was the relation in the year 1900 between the assessed value and the actual value of real property in the county of New York?

Same objection; objection overruled; exception.

A. In my judgment it was 67 per cent. of full, fair, actual value; I am speaking of the real value; real estate was assessed at 67 per cent. of its full, fair value; this finding is based upon the assessment-rolls of 1899.

Q. Take to-day as distinguished——

A. (Interrupting.) I wouldn't like to commit myself because we have to pass officially upon that the first Tuesday in September next.

Q. Is there any substantial difference?

Defendant's counsel objected to any evidence of any other year except evidence of the year in question: the assessment of 1899 as equalized in 1900.

Mr. BROWN: We can take his opinion as to the percentage of valuation on the assessment-rolls of 1900.

Mr. FIERO: That we object to as immaterial and irrelevant to this issue.

The REFEREE: Confine it to the year we are inquiring about.

Mr. BROWN: It may be Mr. Fiero is right, but our assessment was made in the spring of 1900, and we do not want to be met hereafter by the assertion we have not covered the assessment of the proper year.

Mr. FIERO: There is no question but that is the assessment to which Mr. Priest refers.

The REFEREE: He is talking about an assessment that became fixed the second Monday of January, 1900; that is the assessment we are concerned in here.

The WITNESS: That is correct.

198 Mr. BROWN: If the Attorney-General will concede that this opinion just given applies to the proper year applicable to this proceeding?

Mr. FIERO: It applies to the assessment made in the year with regard to which we are now litigating.

Mr. BROWN: It is only a question whether we have got to compare the other assessment of 1900 or 1899.

Mr. FIERO: We call it the assessment of 1899 because it is laid in the country in December.

Mr. BROWN: Let us take a concession on the record that the comparison, for the purpose of determining whether the property was assessed at a higher proportion than other real estate, is to be made with the assessment-roll in the county of New York of 1899.

The REFEREE: Which became final on the second Monday of January, 1900. That is the assessment-roll we are dealing with here.

Mr. BROWN: That we all agree on.

The REFEREE: I suppose there is no dispute about that.

Mr. PAGE: The figure which Mr. Priest has given with respect to that period is 67 per cent. as the relation between assessed value and actual value of 100.

It is conceded that the testimony given by Mr. Priest as to the relation between the value of assessed property and the actual value of real property in the city of New York as 67 per cent., covers the year which these certiorari proceedings are to review the assessment of.

Q. I have understood from you that in case of the tangible property connected with special franchises you endeavored to apply the rule that the cost of reproduction was the measure of value; am I correct in that?

The REFEREE: He answered the question in this way: The cost of reproduction taking into account depreciation.

The WITNESS: That was my answer.

199 Q. This was a general rule applied in all cases, was it not?

A. Yes, sir.

Q. Is it not the fact that you were unable to apply any analogous general rule to the case of the special franchises which the board assessed the value of?

Objected to as having been gone over and inquired into.

A. There was no analogous rule for the treatment of intangible property, certainly.

By Mr. PAGE:

Q. When you have said in your previous testimony that you took into consideration various matters which had been referred to, you mean the board?

A. I mean the board.

Q. When you say you took into consideration the earning capacity of a particular railroad, you mean, as I understand you, that the earning capacity figured as an element or factor in the final assessment of each company as fixed by the board?

A. That is true.

Q. Is that true in case of all the street railway companies whose proceedings are under review?

A. That is true.

Q. Is the same true of the corporate assets, the market value of stock and bonds and other matters which you have mentioned in your testimony as matters taken into consideration?

A. That is true.

Q. Namely, that they were all figured as factors in the final assessment?

A. They were all considered.

Q. And were appreciating factors in the assessment as finally fixed?

A. Yes.

200 Q. The lease of the Harlem Railroad Company to the Metropolitan provides for a rental of $365,000 a year; that capitalized on a ratio of 20 to 1 makes approximately the sum of $7,000,000; your first tentative assessment, I refer now to the tentative assessment fixed by the board, was $7,702,000; is it not the fact that in fixing this tentative valuation, and the final valuation, which is $6,405,000, that the rental from this lease capitalized was the primary consideration in fixing the assessment?

A. It certainly was a very important element; I can't say that it was the only one.

Q. In this particular case, did not the board capitalize the value of this particular lease in that manner capitalize the rent amounting to $365,000?

A. That was considered— I can't say that was the sole measure of the value fixed.

Q. The capitalizing process, the capitalizing method, was adopted in fixing that assessment value as one of the factors?

A. We considered the rental value fixed by the lessee company; certainly.

Q. You capitalized, did you not, also, in considering the various matters relating to that railway company?

A. I have no distinct recollection of having capitalized it myself.

Q. Wasn't the capitalized value of this lease a matter that was considered by the board?

A. That is true.

Q. It was one of the factors which entered in the assessment as finally completed?

A. That is true.

Q. Is this true of other lines of the Metropolitan system which is the subject of lease by one company to another?

A. Yes, sir; I think it is.

Q. The papers show that the Twenty-third Street Railway Company, when that special franchise was originally granted by the legislature, was put up at auction and sold, and the price obtained for the same was $150,000; do you remember whether or not that

201 figure, namely, the price obtained at that sale for this special franchise, was considered by the board as an element or factor in fixing the assessment of that company.

A. I think it was considered; yes, sir; we had the fact before us.

Q. You had the fact before you?

A. Yes, sir.

Q. Referring to your statement that you followed no fixed rule in valuing the intangible franchises of the various companies, have you covered all the elements which were taken into consideration by the board; in other words, is your enumeration, so far as you recall it, complete?

A. I think so; yes.

Q. You have stated that you took into consideration both the net and gross earnings as appreciating factors in valuing these franchises of the Metropolitan Street Railway Company; by you I refer to the board; did you take into consideration the profits from the operation of the Metropolitan system as an appreciating factor in the valuing or fixing the final assessment of the various special franchises?

A. Yes, sir, it was considered.

Q. Is it not the fact that no specific oath was taken either by you or by the experts of the board who made valuations and gave information to the board?

A. In each instance do you mean?

Q. Yes?

A. Simply the certificate of valuation made by the three commissioners; that is all, or by the secretary for them.

Q. No oath was administered to the individual making those certificates?

A. The certificates were issued by our secretary by our order; he is a sworn officer and each one of the commissioners is a sworn officer.

Q. This certificate is the only verification which there was in respect to those statements?

A. That is true.

202 It is stipulated that the testimony of Mr. Stearns and of Mr. Leaycraft, the other commissioners of the board, who have been present at this hearing at which the testimony of Mr. Priest has been given, is deemed to be given by those gentlemen as

witnesses in this proceeding and that their testimony is and is to be deemed to the same effect and to be of the same tenor as the testimony of Mr. Priest, subject to the same objections and the same exceptions as taken to the testimony of Mr. Priest.

Mr. PAGE: In making this stipulation we do not mean to regard it as waiving the right to call Mr. Priest again if necessary.

(NOTE.—The following testimony of Mr. Priest was taken for all cases on September 4, 1901, and is a part of the record in this case, according to stipulation.)

GEORGE E. PRIEST, recalled:

Examined by Mr. PAGE:

Q. Have you read over your testimony in the Metropolitan case since the last hearing?

A. I have had a chance only to glance at it; for the last week I have been very busily engaged on the State equalization table.

Q. In that testimony were enumerated various facts and matters which the board considered as factors or elements entering into other valuation of assessments, do you remember?

A. Yes.

Q. Has anything occurred to you since the last hearing as being a fact or matter which the board considered as factors or elements entering into their valuations or assessments upon which the basis of valuations and assessments were made other than what you referred to in your previous testimony?

A. No; only this occurs to me in that connection that I might have added that those factors or elements which were considered——

203 Mr. PAGE (interrupting): You have answered the question.

Mr. FIERO: He has a right to complete his answer.

Mr. PAGE: I ask only the specific question as to whether you omitted, so far as you recall, any specific fact?

Mr. FIERO: I submit Mr. Priest has a right to answer the question put to him.

The REFEREE: Complete your answer to the prior question.

A. I don't know that I would add anything to that except this, that these factors and elements as then considered——

Mr. PAGE: I object as not responsive.

A. (Continuing:) I omitted to state the facts, these elements and factors were taken into consideration for the formulation of the tentative value after which we had the guidance of the statements and the evidence and the affidavits and the arguments put before us at the hearings upon which to review these tentative valuations and find the final as certified by us.

Q. With respect to these franchises which were owned by individuals and assessed against them it is a fact, is it not, they aggregated something in excess of a hundred all together?

A. There were several hundred.

By Mr. BROWN:

Q. Won't you answer the question first asked you; is there any fact which the board considered in determining the value of these special franchises which you have failed to enumerate?

A. I couldn't answer that; I suppose there were a thousand facts.

Q. Is there any fact that you considered that you have not enumerated that you can now state?

A. No; I cannot.

By Mr. PAGE:

Q. At a prior hearing in one instance you were asked whether your testimony, as given with respect to the Metropolitan Company, also applied to other companies in the city of New York; I understood then, and ask you to confirm me if I am right, that the testimony applicable to the Metropolitan and to other companies in the city of New York also applied to companies in Westchester county and elsewhere in the State?

A. Yes, sir.

By Mr. PLATT:

Q. In making the assessment of the special franchises of the Consolidated Gas Company, did the board place separate valuations on the special franchises and on its tangible property included in the special franchises?

Objected to upon the ground that the tangible property is a part of the special franchises and the question implies that it is not a part of the special franchises; objection withdrawn.

A. No, sir; they were found together.

Q. Do you make the same answer to a similar question with respect to the valuation of the tangible property of the various other companies whose certiorari proceedings are now before the referee?

Objected to as too general, immaterial and irrelevant; objection withdrawn.

A. Yes, sir.

Q. The Consolidated Gas Company had several special franchises, as reported in this report; did the board, in assessing the franchises of the Consolidated Gas Company, as shown by Schedule C of this return, fix and determine separately the value of each of those special franchises?

A. It did not.

Q. Did your board fix and determine separately the value of the special franchise which the Consolidated Gas Company derived from the New York Gas Light Company?

A. No, sir.

Q. Nor the special franchise which it derived from the Harlem Gas Light Company, or any other of the constituent companies?

A. No one of the six companies: they were found all together.

Q. Where in your previous testimony as to the Metropolitan Street Railway Company you said you made one assessment to cover all franchises of one company, did you mean by that to say you made one valuation of all the special franchises together and no separate valuation of each separate special franchise?

A. That was my intent.

Q. In all of the cases where there are the proceedings before the referee, where there was one company having several separate special franchises, you valued all of these franchises together in one valuation and made one assessment?

A. Yes: where the parent company had merged into the constituent companies and there was the annual report of the gross earnings.

Q. When you say the "parent company" you mean the company which had, by consolidation or by lease, received the franchises of previous companies?

A. That is my meaning.

By Mr. BROWN:

Q. Where you use the term "merged" you include franchises that were owned by lease or by contract?

A. Yes.

206 By Mr. PLATT:

Q. I understand from your previous testimony that, in assessing the special franchises of the different companies, you valued these special franchises according to the earnings of the company?

A. That was one of the elements taken into consideration; yes, sir; and one of the principal elements.

Q. If the earnings of the company were larger then the valuations were made larger, and if they were smaller the valuation was made smaller?

A. I think I may answer yes to that proposition.

Q. In valuing the special franchises, then, you valued them according to the extent of the use that was made of them?

A. We placed valuations upon special franchises which were not in use, if that is an answer.

Q. In some cases?

A. In some cases: yes, sir.

Q. In these cases that are now before the referee on these certiorari proceedings you valued them, to some extent at least, according to the extent of the use that was made of the franchises?

A. Yes, sir.

It is stipulated that all the testimony given by the witness at this hearing as to the method of ascertaining the value of the specia-

franchises is deemed to be given in all the cases pending before the referee, so far as it is applicable.

Q. Do you not now consider that the earnings of the company were derived from the use of all the property, franchises, rights, contracts and good will of the company?

A. I do.

Q. And from its good will?

A. Yes, sir.

Q. Included in the property of the Consolidated Gas Com-
207 pany was real estate not connected with the special franchises, consisting of gas-houses and other real property in use in the business of the company, as shown by Schedule K of the report; was not some portion of the earnings derived from the use of that property?

A. Yes, sir.

Q. Do you know of any way to estimate what part of the company's earnings were derived from that real estate separate from its other property and rights?

A. I know of no rule.

Q. You understand also that the company had a franchise to make gas in its gas-houses and sell gas in public and private places in the city of New York; was not some portion of the earnings of the company derived from the use of that franchise?

A. From the exercise of the right to be a corporation.

Q. From the exercise of the right now I refer to the right to make and sell gas?

A. Yes.

Q. Do you know of any way to estimate what part of the company's earnings were derived from that franchise to make and sell gas as separate from its other property and franchises?

A. I know of no such rule; no, sir; nor way.

Q. The company, also, it appears by Schedule K of the report, had 103,867 services into houses and buildings in New York and the contracts by which gas was delivered in those; those constituted a part of the property and assets of the company; was not some portion of the earnings derived from those rights in private houses; I intend now to refer to the contracts with private individuals which the company had, under which the individuals took gas and which constituted an asset of the company, and the question I ask you is whether the company did not derive some part of its earnings from that property, consisting of those contracts and rights, in private houses?

A. Undoubtedly so.

Q. Do you know of any way by which it can be estimated
208 what part of the company's earnings were derived from those contracts as separate from the other property and rights of the company?

A. I know of no definite rule.

Q. The company also had a franchise to be a corporation and to

do business as a gas company; was not the use of that franchise of some value to it in making its earnings?

A. Yes.

Q. Do you know of any way by which it could be estimated what part of the company's earnings were derived from the use of that franchise as separate from its other property and rights?

A. No exact rule; no, sir.

Q. The good will of the company was also one of its assets from which it derived part of its earnings; do you know of any way by which you could estimate the part of the company's earnings which were derived from its good will as separate from all its other property and rights?

A. Not definitely; no, sir.

Q. How many distinct assessments of special franchises did your board make for the year 1899?

A. About 5,000.

Q. What part of the year did it take to make those assessments?

A. It took most of the year; from April to October.

Q. These assessments were against individuals as well as against corporations?

A. Some few of them.

Q. In your former examination in the Metropolitan Railroad Company case you stated the board took into consideration in arriving at the value of its special franchises, as an appreciating factor, the entire value of the corporate assets of the company; did you, in arriving at the valuation of the special franchises of the Consolidated Gas Company, and the other companies that are now here in these proceedings before this referee, take into
209 consideration all the corporate assets of those various companies?

A. We did.

Q. Schedule D of the Consolidated Gas Company return shows that it had stock and bonds of other companies to the value of $5,571,438, and that this was the stock of the Mutual Gas Light Company of New York, a gas-light corporation which was doing business in New York city; I want to ask you whether the Mutual Gas Light Company is not one of the companies whose special franchise your board assessed separately?

A. Yes; that is my recollection, that it was separately assessed.

Q. Is it not true that your consideration of the large market value of Consolidated Gas Company stock and of its earnings enhanced the valuation of its special franchises?

A. Yes; I think they were deemed more valuable because of that.

Q. I want to ask you whether you make the same answer to a similar question with respect to the various other companies whose proceedings are here before the referee?

A. I do.

Q. I want to call your attention, for the purpose of identification, to a statement which appears in the return which the board made

to the certiorari proceedings in the Consolidated Gas Company case; in that return you state that, "among other things, respondent ascertained that the relator had heretofore claimed the value of its franchises to be upward of $7,000,000;" I would like to have you identify where that statement was made?

A. That was made to the New York City department of taxation and assessments.

Q. In one of the reports which the Consolidated Gas Company made?

A. Yes, sir.

Q. Did you find that the relator had anywhere in that report, or at any time, stated that the value of its special franchises as
210 defined in this act was upward of $7,000,000?

A. No; didn't have reference to the special franchises.

Mr. FIERO: All this evidence is taken subject to the objection made to the evidence of Mr. Priest on the former hearing to questions of like character, and with the same ruling and exceptions.

By Mr. DYKEMAN (in the Coney Island & Brooklyn Railroad Co. case):

Q. In valuing the special franchises of the Coney Island and Brooklyn Railroad Company, did the board take into consideration that it had continuous lines of street railway from Park row, Manhattan, to the Williamsburg ferries at Broadway and Grand street, and of Hamilton and Fulton ferry?

A. I think so; if such was the fact we did.

Q. That was the fact?

A. Then it was so considered.

Q. Did the board determine the special franchises of the Coney Island and Brooklyn Railroad Company to be more valuable by reason of those continuous lines to those several termini?

A. If it increased the earnings, yes.

Q. If it made the earnings more, I presume?

A. Yes.

Q. In effect you did consider these lines to those termini as making earnings?

A. Yes, sir.

Q. Did the board determine the gross and net earnings of the Coney Island and Brooklyn Railroad Company to be a fair measure of the value of the special franchises?

A. Well, as I have previously stated, it was considered as one of the elements, one of the principal elements; I am not prepared here to state it was the only element entering into consideration.

211 Q. You wouldn't vary your testimony in the case of this railroad from the answer made in the case of other railroads?

A. No, because I have no distinct recollection.

Q. Given the same consideration and same weight and effect?

A. I should assume so.

Q. The State Board of Tax Commissioners separately valued and

assessed the special franchises of the Brooklyn City and Newtown Railroad Company at $819,000, did it not?

A. If they were separately reported, yes.

Q. You did make a separate assessment at $819,000?

A. I don't recall the figures now.

Mr. DYKEMAN: The special franchises of the Brooklyn City and Newtown were assessed at $819,000.

Q. That was reported to you as leased to the Coney Island and Brooklyn Railroad Company, was it not?

A. I am not clear in my recollection upon that; I haven't looked it up; I have had nothing to refresh my memory.

Q. In considering the gross and net earnings as a measure of value of special franchises, was any attempt made to divide earnings and apportion one to the lessor system and the other to the lessee system in the case of the Coney Island and Brooklyn Railroad Company where the gross earnings were reported to you as being made by both systems?

A. Will you allow me a moment to refresh my memory?

Q. Surely?

A. (After conference). We did separate the earnings of the two companies.

Q. Did you know that the two companies were operated as one system?

A. I think we did.

212 Q. And no division was made in the report?

A. No; we made the division.

Q. You apportioned one and set apart one portion of the net earnings to one company and the other portion to the other company?

A. That is true.

Q. Was the greater portion put down to the lessor or the lessee?

A. I can't remember the exact proportion now.

Q. Can you remember whether the one or the other was greater?

A. I cannot at present; in making this valuation an apportionment was made from the gross earnings of the larger company to these other companies because they were reported in bulk in the one report in the one company.

By the REFEREE:

Q. Were they assessed in bulk?

A. No; the companies he now refers to were separately assessed.

Q. Your assessment shows that?

A. Yes, sir.

By Mr. DYKEMAN:

Q. Was any portion of the earnings apportioned to that part of the Coney Island and Brooklyn Railroad Company between Prospect Park and Coney Island which you have not valued and assessed as a special franchise?

A. I don't recollect.

Q. Did you take the whole portion of the gross earnings which you set apart to the Coney Island and Brooklyn Railroad Company into consideration when you valued its special franchise?

A. Is that the road about 12 miles in length to which you now have reference and a portion of it you claimed was in turnpike?

213 Q. Yes, sir; that is the road.

A. No: we held that to be private right-of-way and put a valuation, I think, upon only some six miles of it: I am not clear as to the exact proportion, but I think it was about one-half of it.

Q. These portions of the gross earnings in the division made by you were considered the fair measure of the value of the special franchise?

A. They were considered as a guide, as an element, as a factor, certainly.

Q. And as the most important factor?

A. As one of the most important.

Q. Can you give the method by which you made the division between the lessor and lessee system?

A. No, I cannot in detail: it is my recollection that we assumed a certain per cent. for operation of that mileage, but as to the exact details I am unable to state them.

Q. Did you divide them according to the respective mileage or respective length of road?

A. I am unable to state the details at this time.

Mr. FIERO: The same objection and exception to this evidence is made as in the Metropolitan case.

By Mr. DYKEMAN:

Q. In the case of the Brooklyn Union Gas Company did you separately value the special franchises which the Brooklyn Union Gas Company purchased from the Williamsburgh, Brooklyn, Metropolitan, Citizens', People's, Nassau and the Fulton Municipal Gas Companies?

A. To the best of my recollection we did not so separately make the valuations.

Q. Made one assessment over all these special franchises?

A. That is my recollection.

(Brooklyn Heights Railroad Company, pp. 29, 30.)

214 By Mr. COLLIN:

Q. Do you remember the Brooklyn Heights Railroad Company was lessor and operated the railroads of several other railroad companies?

A. I do.

Q. What you have stated in answer to the questions of Mr. Dykeman with reference to the apportioning of the gross earnings between lessor and lessee companies was true also of this system of companies, was it not?

A. I think so.

Q. And also what you testified to in relation to the termini and the value on account of the continuous lines was true as to this system of companies?

A. That would be true.

Q. Do you remember the Brooklyn, Queens County and Suburban Railroad Company was operated by the Brooklyn Heights Railroad Company, as lessor and lessee; do you remember the method by which you apportioned the gross earnings from the operation by the lessee between the two companies, in making your estimate of the gross earnings of each company?

A. I do not remember.

Q. Is that true of all those lessor and lessee companies in the Brooklyn rapid transit cases?

A. Yes, sir.

Hearing, September 18, 1901.

GEORGE E. PRIEST, recalled:

Cross-examination (continued).

By the ATTORNEY-GENERAL:

Q. At page 140, line 15, the question is, "Q. Was a franchise valuable in proportion as it (the company) had agreed to pay the city a greater or lessor percentage of its receipts?" your answer is, "Yes, sir;" is your answer complete?

215 A. No; I meant that within certain limits, if a company agreed to pay a large percentage of gross receipts on acquiring a special franchise it was regarded by us as some evidence that the special franchise was valuable; I say, within certain fixed limits, because I have in mind that the amount of percentage of gross receipts agreed to be paid, if in excess of a certain amount, would not, of course, leave the company enough to pay operating expenses.

Q. At page 141, line 12, the question is, "Q. The greater the sum agreed to be paid in the lease in such cases as that, the larger the assessment, which, in the judgment of the board, was placed upon the line covered by the lease? A. Yes, sir;" is that statement intended to exclude the fact that you considered other elements?

A. No.

Q. At page 136 you state that the final valuations were considered as of the value on January 7, 1900; is that date absolutely correct?

A. I find that the second Monday of January fell on the 8th of January, 1900, instead of the 7th.

Q. At page 146, line 14, question is asked, "Q. Didn't the fact that after the lease it was operated by the Metropolitan Street Railway Company add, in the judgment of the board, to the value of that special franchise? A. Yes, sir; I think it did;" was it the fact of operation by the Metropolitan Street Railway Company, as such, or the fact that it became a part of a system, which was considered as adding to its value?

A. Yes, sir; the fact that it became a part of a successfully operated system.

Q. At page 279 question is asked, "Q. Where you used the term 'merge' you include franchises that were owned by lease or contract? A. Yes, sir;" did you mean by that answer to say that you assessed franchises held by a corporation under a lease or by contract to the corporation holding the property under such lease or contract,
216 or is it to be confined to those cases where the corporations have actually become merged into a single corporation?

A. We assessed special franchises to the corporations by which they were owned without regard to whether they were leased to or under contract with other corporations; we so assessed them whenever we had sufficient facts to do so, and I think that is true with regard to the entire Metropolitan system, so-called; we assessed the franchises to the corporations by which they were owned at that date; my recollection is that that is true with regard to all of the companies whose assessment is in litigation before this referee at this time; this statement does not refer to certain corporations erroneously assessed to the Edison Electric Illuminating Company, the facts in regard to which appear in the Edison case.

Q. At page 279, line 11, question is asked: "Q. If the earnings of the company were larger, then the valuations were made larger; and if they were smaller, the valuations were made smaller; A. I think I may answer yes to that proposition;" is that absolutely correct, independent of other considerations relating to the corporations under consideration in each particular case?

A. It is not a fact that the earnings of the company absolutely controlled; it was an important consideration, but not the sole consideration.

Q. Did you mention in your evidence as one of the elements considered in the assessment the cost of reproduction of the tangible property in the streets; what is the fact with regard to that being considered as an important element in making the assessments; I ask you this question in connection with your evidence at pages 138, 139, where you are asked with regard to the earning power and market value of stocks and bonds of the company as being two very important elements?

A. I should add to my answer relative to that matter at page 139 that we always considered the cost of reproduction of the tangible property in connection with the assessment.

217 Q. Have you caused an examination to be made as to the number of franchises owned by individuals assessed by your board for the year 1900?

A. Yes; and I find that it was about one hundred instead of several hundred.

Q. I call your attention to your statement that your board was engaged in the assessment of special franchises from April to October of that year; is it not a fact that work upon the assessment of special franchises was commenced immediately after the filing of the reports of the corporation about November 1, 1899?

A. Yes; we began our work very shortly after that and continued it, devoting our time to that matter, except as we were engaged in other official duties up to October 1, 1900; the major part of the eleven months intervening was spent in that work; there were 4751 special franchise assessments to be made, and they were situated in nearly a thousand different tax districts through the State.

It is stipulated that all the testimony given by the witness, George E. Priest, as to the method of ascertaining the value of the special franchises, is deemed to be given in all the cases pending before the referee, so far as it is applicable.

Hearing, July 2, 1901.

MR. PAGE: I offer in evidence an extract from the report of the State Board of Tax Commissioners for the year 1899, from the tenth page of the report:

"The following table of percentages, showing relation of assessed value to full actual value of 100; and equalization based thereon for the several counties was unanimously adopted."

Defendant's counsel objected on the following grounds:

First. It is incompetent, irrelevant and hearsay.

218 *Second.* It is not proper or competent evidence to show the percentage which real estate in the city of New York was assessed at in the year 1899. It gives simply the relative amount as to the other counties and not a percentage of the full value of the property in that city.

Third. It is not a judgment or decree, judicial decision or determination of any kind, and is incompetent as evidence of the facts set forth therein.

Fourth. It is a memorandum or table prepared by an official board for an entirely different purpose and having no connection with or relation to the present litigation, and is not binding upon the Board of Tax Commissioners either as a body or as individuals.

Fifth. It is not binding upon the people of the State of New York, who are the real parties in interest, this writ running against these defendants as quasi judicial officers; no previous act, decision or determination made by them in another or different proceeding or even in this proceeding is in any wise binding upon the people of the State.

Sixth. No memorandum, statement, report or decision by the State Board of Tax Commissioners or by the State board of equalization as to the assumed percentage at which property in the city of New York is assessed is or can be binding as against the State of New York or its officers or against the people, the actual parties in this proceeding, so far as such statements assume to fix the percentage of full value at which property is assessed in the city of New York.

Seventh. The State board has no power of authority to determine as between different parcels of real estate in the city of New York other than special franchises as to whether any parcel or parcels is or are assessed at full value or less than full value, but has only

authority under the statute to determine the ratio of percentage at which all property is assessed in the county as compared with
219 other counties, and that power solely for the purpose of equalization; the State board has not attempted to determine the valuation thereof as a whole for a single purpose.

Eighth. Since the proportion of the State tax to the total tax levy is only 7 per cent., the State board has no power or authority to determine the percentage at which any specific piece or parcel of property may be assessed as against other property in the city of New York, or to determine that all of said property other than special franchises is assessed at less than the full value for any purpose other than that of equalization between the different counties of the State.

Mr. PAGE: As I understand it, no objection is made to this report as not being a correct copy of the original report of which it purports to be a published copy.

Mr. COMAN: No, sir; but that portion from which you quote does not purport to give the action of the State Board of Tax Commissioners. It purports to give the action of the State board of equalization, and this is not a report of the State board of equalization.

Mr. PAGE: I take it it is not denied that the State Board of Tax Commissioners are *ex officio* members of the State board of equalization?

Mr. COMAN: No, sir; that is not denied. They are three members of that board, which consists of ten members.

The REFEREE: Does what you propose to read purport to give the percentage of assessment to real value in the city of New York?

Mr. PAGE: That is our view of it.

Mr. FIERO: That, I think, is one of the difficulties our friends will find. It is an assumed percentage of a hundred through the State, not an actual percentage, and it is the relation which New York bears to that assumed percentage of a hundred. (Above here 67, 40, 70, etc.

220 The REFEREE: What they propose to show now is the percentage of the assessment in the city of New York to the real value of the city of New York. Of course, the percentage as to the value in other parts of the State can be of no sort of account.

Mr. FIERO: We say it does not show that or purport to show it.

The REFEREE: You ought to be able to agree on that fact, what the book does show.

Mr. COMAN: It simply shows they adopted these figures as the basis of their equalization.

Mr. FIERO: It shows a comparative value. Again, to call your honor's attention, see just what the State board does. The State board does not get at actual value.

The REFEREE: One hundred represents real value?

Mr. FIERO: Real value; but there is no question it is assumed at real value. That is the difficulty there is about it, and that is where the fallacy comes in in regard to these figures. Then they are assuming that 100 is the real value everywhere, compared with that as

sumed percentage of 100 New York is assessed at 67, but it is not a finding or determination or attempt to determine that value in New York at 100. The assessed value would be 67 per cent. of the actual value in New York city, but simply the assumed basis arrived at throughout the State and taken without any actual basis, but simply to arrive at the conclusion as to the different pieces of property, as your honor will see, because none of it is fixed at a hundred, but it ranges anywhere from 25 up to 80, and is purely for the purpose of comparison, and that brings up the main question, that all that this is is simply for the purpose of comparison. It don't undertake to show at all the actual assessment in New York city of 67 per cent. of the real value; it can't possibly do that, because there isn't any real value assessed throughout the State; there isn't a place in the State where it is assessed at a hundred.

221 The REFEREE: Suppose this was confined to the city of New York alone; eliminate everything else, and they assume the real value to be a hundred and they say the assessment is 60 per cent. of that. Don't they mean to determine by that that the assessment is 40 per cent. below the real value?

Mr. FIERO: Under such and such years that would be precisely what it would mean.

The REFEREE: If it don't mean that what does it mean; what can it mean?

Mr. FIERO: It don't mean that, simply because it isn't taking New York alone; it is taking New York in comparison with an assumed valuation of a hundred cents throughout the State, which don't exist.

The REFEREE: One hundred, meaning the figure X.

Mr. FIERO: And it don't exist; it is the unknown quantity.

The REFEREE: In Kings county the assessment may be 20 per cent. below real value; in Herkimer county it may be 40 per cent. below; wouldn't that be 40 per cent. below real value, no matter what you assumed, a hundred or X or Y or any other thing?

Mr. FIERO: I take it not; I take it the X remains all the while an unknown quantity; it isn't the 100 which is arrived at as the actual value in New York city.

The REFEREE: X is an unknown quantity and the 40 per cent. difference is a known quantity.

Mr. FIERO: You can't get at it by taking the known quantity and deducting it from the unknown. Sixty-seven per cent. doesn't mean sixty-seven per cent. of actual value.

The REFEREE: Isn't this whole operation, then, all imaginary—the whole work?

222 Mr. FIERO: It is imaginary so far as real values are concerned. It is only useful as giving comparative values between different counties, and the sole object of it is—and that is another branch—the sole object is to equalize as between the county of Albany and county of Herkimer and county of New York, and assuming Albany at 80 per cent., Herkimer at 80, if you please, Erie at 70, New York at 67, and then arrive at the fact that the re-

lation of those properties to each other is upon an assumed basis of 100 per cent.; that of 67, 80, etc., but not to get at the actual value. That needs another suggestion in reference to it, and is this: That for any other purpose this board has not got any power or authority. The suggestion is made here, and it is a matter of which your honor will take judicial notice, that only 7 per cent. of the tax which is collected is a State tax; the remainder is a tax in the city of New York and a local assessment. Now, these men have no right, no power, no authority, to fix the assessment down in New York and say 67 per cent. of the real value so as to govern or control the people in New York or affect them in any way. It is entirely outside of their jurisdiction; outside of their power; outside of their authority. Moreover, still another suggestion along that same line: These men are not delegated with power or authority to represent the State, except for the single purpose of equalization. While, as a matter of form, this board is the party defendant, the fact they in another proceeding, in connection with seven other men, fixed a valuation, is not any evidence against the State any more than a finding of fact in one litigation by a court could be offered in evidence in another litigation as between different parties where another litigation was in progress and for an entirely different purpose. In other words, this Board of Tax Commissioners simply represent the State to the effect that they are the judicial officers who have determined this question in a matter which came before them in an entirely different way and for an entirely different purpose. The fact that they have said—assuming now for
223 the purpose of the argument that they have fixed this percentage absolutely in New York at 67 per cent. is not binding upon the people of the State in any subsequent proceeding or in this proceeding. It does not follow that now the assessment in New York is 67 per cent. of full value. Your honor's attention ought to be called a little more to the purpose for which the evidence is offered that we are discussing. Of course, the commissioners have returned that they have assessed at full value of 100 per cent. The purpose of this evidence is to show that other property—that all property in New York is only assessed at 67 per cent. of its value, and when you come to the equalization, of course, that includes this property also. Taking this property together with other property, the commissioners have decided it is only assessed at 67 per cent., so that other property is not assessed at 67, but other property is assessed at such a figure that in with all of this property which is assessed at full value in all these special franchises three men have determined that the whole property of the city is only assessed at 67 per cent. of its value. So that we insist that the evidence is not competent, because the State Board of Tax Commissioners, acting as members of the board of equalization, had no right, authority or power to bind the State. That it is not competent evidence for any purpose whatever. That they determined this 67 per cent. for the purpose of equalization as what New York ought to be valued at. Of course, if they were not parties to the record I do not suppose your

honor would have a moment's hesitation about it. You would say at once, if this were an action in which the Metropolitan railroad was plaintiff on the one part and the State of New York was the defendant, and the Metropolitan railway came in as it does now and said, "We offer to show that heretofore the State Board of Tax Commissioners, who are State officers, have determined and fixed a fact for another purpose," it wouldnt be such a determination as your honor would allow for a moment, but I say that because these
224 commissioners are parties to the record does not change it, because they are simply parties for the purpose of making their return; they are not the real parties in interest.

Mr. COMAN: They didn't fix this valuation.

Mr. FIERO: It was the State board of equalization; three of the members, only, out of ten that fixed the valuation.

The REFEREE: Of course, I am not sure but what you may be right, but these admissions, or whatever you call them, this determination, is not binding. The only question before me is whether it is evidence. It don't bind the State. Take admissions by administrators in an action against them; admissions by commissioners of highways; while their admissions might not bind the town, but in a proceeding against them to which they were a party are not admissions by all public officers; some evidence against them in the proceeding not binding on the State or county or town or on the estate where admissions are made by executors and administrators. The question is now, in my mind, while not binding, while it is open to explanation, open to proof of the truth; if this is not true, the question is whether it is not some evidence against these defendants in this proceeding.

Mr. COMAN: May I ask a suggestion right there?

The REFEREE: Yes.

Mr. COMAN: Does not your honor in making that suggestion lose sight of the fact that this admission, if it was an admission, was not made by any party to this action, but by the State board of equalization, who are not parties to this action at all.

The REFEREE: These parties are members of that board and joined in making this statement.

Mr. BROWN: It is a table they prepared, adopted by the State board of equalization. It is their table.

225 The REFEREE: It seems to me that it is a pertinent fact, of course, here to show that while this property is confessedly assessed according to this return at its full value, that other property in the city of New York generally is assessed at less than its full value, so that there is injustice, relatively. The only question is whether you can get at it in this way. If this report of these men means anything, if it is a report to be relied upon, if it has any significance, it seems to me that it means that in the city of New York whatever the real value may be, the general assessment was 33 per cent. below that value. If it has any meaning, it means that. If it does not mean that, I don't see that it is of any account whatever.

Mr. FIERO: We say it is not for this purpose.

The REFEREE: No matter what the purpose was. The purpose was to ascertain and determine what the assessment was, what the value of the assessment was as compared with the real value. That was the very thing that they were to find out. They were to equalize the assessed value with the real value as far as they could.

Mr. FIERO: That is where I tried to show your honor your view was in error. It is not an attempt to show the assessment of New York as compared with the real value, but to show how New York is assessed, at what percentage as compared with other localities. There never was an attempt and no reason for any attempt to show what the actual proportion is in New York to a hundred per cent. actual value, but for the purpose of making an equality throughout the State, assuming that the State is assessed at 100, which it is not.

The REFEREE: Not assessed at a hundred, but assuming that the real value was a hundred.

Mr. FIERO: When you assume the real value is 100 you have no figures relating to assessment that bears that out. Just a
226 word in reference to admissions. I submit an admission by an administrator or executor stands upon a different ground because he represents the estate. But a public officer can not make an admission which is binding upon the State unless it is directly in the line of his duty and one of the things he is charged to do. These men were acting in that case in a quasi judicial capacity, and they made a determination there which they acted upon. Certain evidence was before them. It does not appear whether that determination was properly arrived at, and you cannot determine whether it was properly arrived at or not. You may take any case where there has been evidence given in regard to a matter. One side perhaps does not appear. That can not be used subsequently when a determination comes up to say that court determined that question, and therefore it is evidence, unless it was a litigation between the same parties. That is the point upon which we stand, and it would be unjust to the city of New York. Ninety-three per cent. of the taxes go to the city of New York, and not to the State. What right has a State board under such circumstances as those to determine the percentage? I want to call your honor's attention to that fact. Under the franchise law 93 per cent. of that assessment which is made is for the benefit of the city of New York, locally. Ninety-three per cent. of the taxes go the city of New York, locally. This tax board has no right to fix or determine in any way the percentage, nor is it any evidence as against the city of New York.

The REFEREE: I agree with you they are not binding. I am not sure it is not some evidence, and I think the safer way is, as I am to take and report the evidence, to take this evidence. It will not take a great while to give it for what it is worth. I will hold for the present that it is some evidence, the weight to be given to it will be determined hereafter.

Defendant excepts.

227 Mr. PAGE: I continue to read from page 10, "New York percentage, 64 per cent." I now read the report of the State Board of Tax Commissioners, of which the statement from which I have previously read was a part. The following is the report, the statement being a part of it: "At a meeting of the State board of equalization, held at the office of the secretary of state, in the city of Albany, on the fifth day of September, 1899. Present—S. Fred Nixon, speaker; William J. Morgan, comptroller; John T. McDonough, secretary of state; John C. Davies, attorney-general; John P. Jaeckel, treasurer; Edward A. Bond, State engineer and surveyor; Martin Heermance, tax commissioner; George E. Priest, tax commissioner; J. Edgar Leaycraft, tax commissioner. Absent—Timothy L. Woodruff, lieutenant-governor. The following report was submitted."

The REFEREE (interrupting): Submitted by the said tax commissioner?

Mr. PAGE: Submitted by the State Board of Tax Commissioners.

Mr. COMAN: I object unless it appears in the record.

Mr. FIERO: Is it signed by the present commissioners?

Mr. PAGE: No; "Martin Heermance, George Priest, J. Edgar Leaycraft, State Board of Tax Commissioners."

Mr. FIERO: We further object on the ground it does not appear it was the act of the present board of tax commissioners.

Mr. PAGE: "The State Board of Tax Commissioners respectfully submit the following report: The total assessed value of real and personal property taxable locally for all purposes in the State of New York for the year 1898 shows a net gain over the assessment of 1897 of $177,785,805. The increase for the two years prior thereto was $529,898,116, making an aggregate net increase
228 for the three years last passed of $707,683,921. This, of course, does not include the large increase in the county of New York under the present assessment, which will not be officially reported until December of this year, and will be considered in the State equalization for 1900. During the present year we have visited officially the counties of Chattaraugus, Chenango, Clinton, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Lewis, Livingston, Monroe, Nassau, New York, Oneida, Otsego, Queens, Rensselaer, Richmond, Rockland, Schenectady, Schoharie, Schuyler——"

The REFEREE (interrupting): How are these other counties important?

Mr. PAGE: Nothing, except I want to read the report in full.

The REFEREE: Go on.

Mr. PAGE: "Steuben, Sullivan, Ulster, Warren and Washington. In all of these counties we have inquired as closely as possible into the methods of assessment, in each instance examining witnesses under oath and using every means available in procuring evidence upon which to base a table of equalization. Committees appointed by boards of supervisors have appeared before us and presented arguments, both oral and written, on behalf of their respective

counties. We submit herewith a digest of the evidence upon which this board has prepared the following list of percentages and table of equalization based thereon. All of which is respectfully submitted. Martin Heermance, J. Edgar Leaycraft, Geo. E. Priest, State Board of Tax Commissioners." This report was presented at the meeting of the State board of equalization on the 5th day of September, 1899.

Mr. FIERO: We object to that on the ground that it was before the franchise tax went into effect and has no relation to or connection with the present assessment, and move to strike it out on that ground.

229 Mr. BROWN: It is within twenty-five days of the time the law took effect and is some evidence of the relation the percentage value bears to the actual value.

The REFEREE: That was the last preceding assessment.

Mr. FIERO: And not the assessment now being litigated.

The REFEREE: The last preceding assessment before the one now in question?

Mr. FIERO: This point in regard to that, of course, the assessment advanced, and as your honor will see just there by the reading of that report, that there was a large increase in New York city, a large raise in New York city, so that the percentage was different from other years, so that this percentage ought not to be allowed in evidence.

The REFEREE: It ought to be confined to the year we are now interested in; you have got that, have you?

Mr. PAGE: I have that and I am now coming to it. Our point still is, this year's proceedings which I have just read is some evidence on this question now before the court; I now, however——

The REFEREE: I don't see the relevancy of any inquiry into the comparative values of any year except the year we are now concerned with. You see, these assessments and the basis upon which they are made, as I know all through the country, differ from year to year, while they are always below the real value, yet the percentage differs from year to year, so that I don't see that it would be a very valuable guide to take the assessment for any year except the one in question.

Mr. PAGE: As I understand it, the point last made, and on which the motion to strike out has just been made, is that this re-

230 port which I have read is a report by a board a year prior to the year in which the transactions took place which are now the subject of review by these certiorari proceedings.

The REFEREE: That is as I understand it.

Mr. FIERO: It is the equalization of the assessment for the year previous, although not made until the next August; the fact being the assessment is made the year before and then the equalization is made the next year.

The REFEREE: See if I understand it. There has been an assessment in the city of New York since this one?

Mr. FIERO: Yes, sir.

The REFEREE: It is that assessment we are inquiring into now?

Mr. FIERO: Yes; and there was a subsequent equalization of that assessment.

The REFEREE: We ought to be confined to that.

Mr. BROWN: Suppose we should show from the beginning of the State right down the tax commissioners of this State—the real estate in the State of New York has never been assessed at its full value?

The REFEREE: Assuming that is so, but when you come down to the percentage they vary from year to year.

Mr. BROWN: If they will concede a fact which Mr. Fiero has stated in the way of assumption, that real estate in the city of New York is never assessed at full value—they have returned here a fact that they have assessed these franchises at their full and actual value. Certainly in that connection it is important for us to show—and they are assessed as real estate—that real estate in the State of New York never has been assessed at its full and actual value, and we are aggrieved when we are put on a basis of full value.

231 The REFEREE: I suppose that is true of every county in the line.

Mr. BROWN: If they will concede it, all right.

Mr. FIERO: What difference would that make, if, in the year 1900, it was assessed at the full value?

Mr. BROWN: As we are going to put 1900 in it becomes material to show not only that that year we are assessed at full value, while all other real estate in the city of New York is assessed at 67 per cent., but never in the history of the State has real estate been assessed at its full value.

The REFEREE: If you show it is not assessed at its full value in 1899, if that be the same, that accomplishes your whole purpose. This admission it is never assessed at its full value is of no account.

Mr. BROWN: I make this suggestion in view of the motion to strike out.

The REFEREE: I hold it must be confined to the assessment in question.

Mr. BROWN: Does your honor strike it out?

The REFEREE: Yes.

Mr. BROWN: We take an exception to that ruling.

Mr. PAGE: I now read from the annual report of the State Board of Tax Commissioners of the State of New York.

Mr. COMAN: To that we make the same objection as before, to the last offer.

Mr. PAGE: With the exception that this is a copy of the official report.

Mr. COMAN: We didn't make any objection on that ground.

Objection overruled; exception.

232 Mr. PAGE: I read from page 27, as follows: "To the State board of equalization," as herein set forth, which is dated Albany, September 1, 1900, and which is signed by George E. Priest, J. Edgar Leaycraft, Lester F. Stearns, State Board of Tax Commis-

sioners. I read extracts from the same as far as they bear on this proceeding: "The special franchise valuations, upon property in public streets and places, appear for the first time upon the local assessment-rolls of 1900, for all the purposes of local taxation." "During the present year official visitations have been made to the following counties: Albany, Alleghany, Broome, Cayuga, Chautauqua, Chemung, Columbia, Cortland, Erie, Genesee, Herkimer, Jefferson, Madison, Montgomery, Niagara, Onondago, Ontario, Orange, Orleans, Oswego, Putnam, Saratoga, Seneca, St. Lawrence, Tioga, Tompkins, Wayne, Westchester, Wyoming, Yates. In each of these counties the attendance of the assessors and supervisors has been uniformly large and the sessions mutually instructive and beneficial. We have, as thoroughly as time permitted, searched into the methods of assessment, in each instance examining the witnesses under oath; have inquired into sales and their character as compared with assessments preceding and following such sales; have personally examined some of the property treated on the rolls in many cities and county seats, and have sought by every means open to us to obtain information available for the preparation of the table of equalization which we herewith present." "We herewith furnish the assembled data upon which we have formulated the list of percentages accorded to the counties, and the proposed table of equalization." I now read from the table of equalization annexed to the foregoing report, which appears at page 29 of the printed report: "The following table of percentages, showing relation of assessed value to full actual value of 100, and equalization based thereon for the several counties was unanimously adopted: * * * New York, percentage, 67."

233 Mr. COMAN: If your honor please, it appears from the report just read that the commissioners did not visit the city of New York during the year 1900. I move to strike out the evidence upon that ground as well as upon all the grounds stated in the objection to its reception.

Motion denied; exception.

Mr. PAGE: If your honor please, we think, in view of the point just made, we are entitled to have the extracts from the report of the preceding year stand, in that it specifically appears in that year they did visit the city of New York.

Mr. FIERO: They give a different result.

The REFEREE: I don't see that is very important. You have got their statement they made of the examination they thought was necessary, probably.

Report for 1900 marked for identification, "J. M. R., July 2, 1901."

Mr. PAGE: I now read from the report contained in the same document made to the legislature by the State Board of Tax Commissioners, the board now in office, dated January 25, 1901. The portion which I now read is as follows, at page 20:

Mr. COMAN: The same objection as previously made, and exception.

The REFEREE: Same ruling.

Mr. PAGE: "Two important variations desirable. As material amendments we urgently recommend, as of paramount importance the following:"

Mr. FIERO: The additional objection that this is not a statement of a fact, but a simple statement of opinion.

The REFEREE: I don't know what it is, of course. I don't see just now how a recommendation made by them is a matter of evidence.

234 Mr. HILL: Recommendation bearing upon what they had done; that is what it is.

The REFEREE: He can read it and we will see what it is.

Mr. PAGE: I will read it, subject to your honor's ruling afterward: "*Second*—The law should authorize and direct this board to equalize, after hearings, special franchise valuations found by it to conform with the local assessment of other real estate in the tax district where special franchises exist, upon such proofs and information as the board can obtain. Such authorization will afford the warrant of law for supplying a remedy in the first instance to corporations. The corporations are now compelled in every case, involving great or small amounts, to resort to a court proceeding for a reduction which this department may be willing to admit is equitable; but is not by the law, in its present reading, permitted to make." We offer this in evidence as proof of the fact.

The REFEREE: Of what fact?

Mr. PAGE: That in this case there has been an inequality in the valuation or in the assessment of the various relator company franchises in that it is assessed at full, actual value, whereas real property elsewhere through the State, and particularly in the county of New York——

The REFEREE (interrupting): They admit in their report it was assessed at full value.

Mr. PAGE: This proof may be cumulative, but we offer it as a part of the line of proof we have previously given.

The REFEREE: Their return is conclusive on that fact, that they have assessed it at its full value. You have got two facts now before me; one is they have assessed at full value; that is conclusive; that binds everybody in this proceeding. They have assessed it at

235 it full value. Now you have the other fact so far as this tends to prove it, that other property was assessed at less than its full value.

Mr. BROWN: Isn't this an admission on that very point? Isn't it inferentially an admission that other property is assessed at less than its full value, other real estate, otherwise there would be no basis for their recommendation?

The REFEREE: Yes.

Mr. BROWN: In that view it is admissible.

The REFEREE: As I understand it, my report goes before Judge Herrick, and if I have admitted any evidence that is not competent you can argue that question there and he can disregard it. Is not that so?

Mr. FIERO: After your honor has passed upon the facts with the evidence in that is the limitation upon that.

The REFEREE: He can strike it out, and if the balance of the evidence, the evidence remaining does not justify my conclusions, he will reverse my conclusions, but if I shut out evidence that *it* competent, and he should hold it to be competent, then he would have to send it back to a referee to get that evidence, so that in all cases of doubt, of course, it is a good deal safer to let evidence in. I do not regard this evidence as very important to these parties. They have got the proof in for all that it is worth, and this would be just cumulative. Another admission of the same men. I think we had better shut this out. You have got the admission of these men in; it won't fortify it much by putting it in again; make it no stronger. I don't think it adds any strength to it, so I think the safer way is to leave it out. It is only by inference and implication they make an admission here. I hold the admissions of these men are competent, and I have received them, but I do not think this evidence is important.

Plaintiff excepts.

236 (NOTE.—The following testimony of Mr. Hobbs was taken for all cases on August 2, 1901, and is a part of the record in this case, according to stipulation.)

Hearing, August 2, 1901.

FREDERICK G. HOBBS, sworn in behalf of all the plaintiffs, testified:

Examined by Mr. PAGE:

Q. Will you please state your occupation?
A. Real estate broker.
Q. Where do you do business?
A. No. 284 Columbus avenue, New York city.
Q. How long have you been in business there?
A. About twelve years.
Q. Does your firm do a general selling business in real estate throughout the city?
A. Yes, sir.
Q. Have you made sales during the year 1900 of real estate personally?
A. Yes, sir.
Q. Have you examined the assessment-rolls in the city of New York for that year for the purpose of comparing the assessed values of the property which you have sold with the prices at which such property was sold?
A. I have.
Q. In your opinion, did the assessed value of such property equal, exceed or fall short of the actual value of the same?

Objected to upon the ground it is incompetent and that the testimony should be confined to specific pieces of property. And the witness should state facts.

(The REFEREE:)

Q. Have you in mind any particular case, Mr. Hobbs?
A. Yes, sir.

Mr. PAGE: I submit we are entitled to an answer to the original question, he having been, in our opinion, properly qualified as an expert.

237 The REFEREE: I will allow him to state that in the case of sales made by him and comparing the prices obtained with the assessments upon the same property, that in all cases the assessed values were less than the sale values.

Defendant excepts.

By Mr. PAGE:

Q. In the cases of property which have been sold by you during the year 1900, was the selling price in excess of the assessed value of the pieces of property?

Objected to on the ground it is incompetent and not the proper method to prove the fact sought to be proved. That the witness must give the value of the particular piece of property as assessed, and the sales value or actual value. That this question calls for a conclusion and not for a fact, and is incompetent.

Mr. PAGE: I desire to restate my question precisely in accordance with the statement which has been made by Judge Fiero, as follows: Have you prepared a list of the parcels of property which you sold during the year 1900, the amount of the assessed value of the same during that year and the percentage of actual value to assessed value in the several cases?

A. Yes, sir.

Q. Will you produce such a list; I now refer to the year 1900?

A. Yes, sir (producing same).

Q. Are these percentages which you have calculated correct?

A. They are.

Q. Are the tables which you have given of the selling prices correct, and of the assessed values?

A. Yes, sir.

The following tabulations were then offered in evidence:

Year.	Location of property.	Actual value.	Assessed value.	Assessed value equal to per cent. of actual value.
1900.				
Jan. 10	149 Riverside drive, to A. G. Loomis	$73,500	$40,000	54.421
Jan. 22	321 W. 106th St., to Chas. Osborn	35,500	18,000	50.704
Jan. 22	1228 Madison Ave., to S. & S.	16,000	11,000	68.750
Jan. 29	S. E. cor. B'way and 92d St., 161.3 x 108 x 147	199,000	90,000	45.226
Jan. 29	1772 Amsterdam Ave., to Martha B. Moshier	33,000	17,000	51.515
Jan. 30	1228 Madison Ave., to Frank Wise	15,750	11,000	69.841
Feb. 1	125 W. 77th St., J. Wallace Morrell	41,000	29,000	48.780
Feb. 10	2720 B'way, James F. McGarry	30,000	12,000	40.
Feb. 13	13 lots, 101st St., West End Ave. to B'way (125 x 100.11 inside 5 lots, $80,000; N. W. cor. B'way, 101st St., 96.7 x 100, $39,500; N. E. cor. West End Ave., 101st St., 100.11 x 100, $40,500).	227,000	110,000	48.898
Feb. 21	109 W. 76th St.	26,000	13,000	50.250
Mar. 1	Two lots, north side 86th St., 100 ft. east of Riverside drive.	42,000	24,000	57.142
Mar. 26	9 East 76th St., John N. Golding	73,750	40,000	54.237
Apr. 4	22 W. 87th St., Patrick Moore	37,000	22,500	60.810
Apr. 10	10 W. 76th St., Frederick H. Parks (1900, 35,000 p.)	(1901) 77,500	43,000	55.483
Apr. 11	B'way, east side, 108 ft. south 92d St., 53 x 102 (July 28, 1900; auction, $57,750.	56,000	42,000	75.
Apr. 25	323 W. 86th St., A. B. Knight to Wm. H. Hulick, 18.6	(1901) 32,250	25,000	77.519
June 1	160 W. 73d St., J. H. Armstrong	22,500	15,000	66.666
June 27	270 W. 93d St., Warden T. Rosen	24,000	15,000	68.181
June 28	644 W. 114th St., G. L. Slawson	16,000	10,000	62.500
July 10	524 West End Ave., Fannie M. Chapin, Waldron Williams.	43,000	27,500	69.953
July 10	Lot south side 112th St., 250 ft. West 7th Ave., A. H. Brennan to Hallahan Ahern.	10,750	5,000	46.511
Aug. 15	148 W. 70th St., J. P. Huggins to Dr. Embury	25,000	18,500	74.
Aug. 31	342, 344 W. 85th St., Edw. Kilpatrick to R. R. Stratton (17 ft.)	100,000	65,000	65.
Sept. 5	267 W. 71st St., John R. Thorp to Wm. T. Evans	22,100	13,500	61.086
Sept. 12	269 W. 71st St., Sarah C. Newman to Rodrigues	19,000	14,500	76.316
Sept. 13	274 W. 89th St., E. A. Becker to H. P. Penning	21,500	14,000	65.116
Oct. 22	36 W. 73d St., Ella L. Montalbo to Mr. Clark	45,000	24,000	53.333
Nov. 20	322 W. 80th St., Clarence True to E. B. Meyrowitz	38,000	24,000	83.157
Nov. 24	S. E. cor. B'way and 94th St., 83.5 x 146, A. Bruns to A. E. & M. E. Bingham.	120,000	17,250	39.375
Nov. 24	Sale lots south side 94th St., 110 ft. west of West End Ave., 100 x 100.8, g. F. M. Jencks to R. Axelrod.	130,000	35,680	27.382
Dec. 5	Sale of 168 W. 73d St., for Mrs. Sanders to Wm. Stokesbury.	17,750	15,000	84.507
Dec. 24	344 W. 105th St., Umberfield to B. R. Merwin (16000 p-1900).	(1900) 39,250	20,000	50.955
		$1,705,100	$907,350	53.213

239 Mr. PAGE: I desire to state that there are twenty-nine sales here given and that the average percentage of assessed value to selling price was 53.213.

Q. Does this statement comprise all of the sales which you have made?

A. All the cash sales made during that year, exclusive of exchange.

Q. Were the prices which you obtained in all of those cases the best price which you could obtain for the property?

A. Yes, sir.

Q. Are you familiar generally with sales throughout the city of New York?

A. More particularly on the west side.

Q. Are you familiar generally with real estate transactions throughout the city?

A. Yes, sir.

Cross-examination.

By Mr. COMAN:

Q. All of the sales which are indicated upon this statement which has been put in evidence are of property north of Seventieth street, or at Seventieth street, and further north?

A. Yes, sir.

Q. That is what you call the upper portion of the west side?

A. Yes, sir.

Q. Is it a fact that values are quite rapidly increasing in that portion of the city?

A. They are advancing in some cases.

Q. As a rule?

A. As a rule, I think, they are advancing; there are exceptions.

Q. I understand you these are all the cash sales you made during the year 1900?

A. Yes, sir.

240 Q. By that you mean of actual sales?

A. Yes, sir.

Q. Not speaking of exchanges of property?

A. No, sir.

Q. Have you any statement of your sales during the period from June, 1899, to January, 1900?

A. Yes, sir.

Q. Have you it here

A. Yes, sir.

Q. Will you produce it?

A. Yes, sir (producing same).

Q. In the cases of these sales upon the statement which has been put in evidence, were your sales accompanied by loans to the purchaser?

A. What do you mean, leaving a purchase money mortgage on the property?

Q. Or loans made for the purpose of erecting buildings?

A. The sale on April 11, I think, was made at $75,000; there was a building loan and afterward there was some trouble with it and afterward it was sold at cost July 28 for $77,750 and bought by an outsider.

Q. Are there any other cases of building loans there?

A. Yes, sir: there (indicating).

Q. In the sale of the southeast corner of Broadway and Ninety-fourth street the sale was for $120,000?

A. Yes, sir.

Q. How much was loaned?

A. I have forgotten.

Q. Could you tell approximately?
A. I have no recollection.
Q. The sale of November 24, lot south side of Ninety-fourth street west of West End avenue for $130,000, was also accomplished by a building loan?
A. Yes, sir.
Q. Do you remember how much that was?
A. No, sir.
Q. You couldn't tell approximately?
A. No, sir.
Q. Those are the only instances that you now recall?
A. Yes, sir.

Redirect examination.

By Mr. Page:

Q. Referring to the tabulation, concerning which you have last testified, it contains a statement of sales for six months, beginning June, 1899, and extending to January 1, 1900, does it not?
A. Yes, sir.
Q. Is that a correct statement of sales which you have made and of the assessed values of those parcels of property?
A. Yes, sir.
Q. Are the computations connected with those correct as contained in that statement?
A. Yes, sir.

Plaintiff's counsel (Mr. Page) offered in evidence as further testimony on the part of this witness the tabulation of his sales and assessed values of the same property.

Date.	Location of property.	Consideration.	Assessed value.	Assessed value per square foot of land.
1899.				
Jan. 31	[illegible]	[illegible]	[illegible]	[illegible]
Jan. 27	[illegible]	[illegible]	[illegible]	[illegible]
Jan. 27	[illegible]	[illegible]	[illegible]	[illegible]
Jan. 31	[illegible]	[illegible]	[illegible]	[illegible]
Feb. 1	[illegible]	[illegible]	[illegible]	[illegible]
Feb. 1	[illegible]	[illegible]	[illegible]	[illegible]
Feb. 1	[illegible]	[illegible]	[illegible]	[illegible]
Feb. 1	[illegible]	[illegible]	[illegible]	[illegible]
00				
Jan. 1	[illegible]	[illegible]	[illegible]	[illegible]
Jan. 4	[illegible]	[illegible]	[illegible]	[illegible]
Jan. 4	[illegible]	[illegible]	[illegible]	[illegible]

Year.	Location of property.	Actual value.	Assessed value.	Assessed value equal to per cent. of actual value.
Mar. 14	532 W. 114th St., E. S. Kennedy to Emma F. Hopping....	{ 25,000 (1900) }	13,000	52.
Mar. 17	133 W. 80th St., Gertrude E. Shannon to J. Arthur Joseph.	30,000	19,000	63.333
Mar. 22	Plot 50 x 100,8½ south side 93d St., 200 feet west of Central park, west, assessed in 1899 in one large plot, p'd $12,000.	.....	.....	.....
Mar. 25	315 W. 76th St., A. Gwyer to Wm. H. Park.....	33,750	21,000	62.222
Mar. 28	N. W. cor. B'way and 90th St., 50 x 100, F. M. Jencks to Egan & Halleey.	70,000	28,500	40.714
Mar. 29	Mary and Margaret McConvil e to Albert D. Oppenheim, 18 W. 87th St.	31,000	22,000	70.967
Apr. 7	Plot 50 x 100 west side B'way, 50 ft. north 90th St. to Mrs. Clark.	51,000	24,000	47.058
Apr. 12	103 W. 86th St., D. Willis James to Dr. Palmer.....	28,000	24,000	85.714
Apr. 13	119 W. 127th St., Mary E. Crawford to Ella W. Eddows...	10,750	8,000	74.418
Apr. 26	N. W. cor. B'way and 87th St., 100 x 150, J. M. Horton to Mrs. Clark.	130,000	64,500	49.616
May 5	308 W. 104th St., Ethel L. Benson to Shepard Knapp.....	23,000	15,500	67.391
May 27	N. E. cor. Amsterdam Av., 107th St., 50.7 x 100, Chas. Weisbecker to David Richey.	41,500	17,000	40.963
June 1	7 W. 95th St., Peter Wagner to Fritz Hill.	33,000	20,000	60.606
June 1	202 B'way, A. B. Brown *et al.* to O. F. Zollikoffer.....	300,000	275,000	91.666
June 16	320 W. 91st St., R. E. Dowling to J. J. Smith.....	45,000	25,000	55.555
July 3	258 W. 75th St., Alice C. C. Rovee to Harry J. Crawford..	22,000	8,500	38.636
July 10	S. W. cor. 2nd Ave., 72nd St., 102.2 x 50, Martin Metzger to Egan & Halleey.	49,000	14,000	28.571
July 21	37 W. 87th St., W. D. Starr to W. F. H. Armstrong.....	43,000	22,000	51.162
Aug. 16	315 W. 88th St., Jas. Carlew to Hattie Mendelson.....	43,000	21,000	48.837
Aug. 22	435 West End Ave., Metropolitan Improvement Co. to Mr. Quigg.	27,000	18,000	66.666
Aug. 25	Riverside Drive, house 20 x 80, S. & S. to Mr. Wiggins...	47,500	32,000	67.368
Sept. 12	2070 Eighth Ave., N. E. cor. 112th St., A. McDowell to Leasenfeld.	{ 63,000 (1900) }	30,000	47.619
Sept. 14	239 W. 96th St., Frame & Son to Otto Seyd.....	27,500	15,000	58.181
Sept. 27	151 Riverside drive, Hall to Murphy (1899, p. 23980).....	{ 75,500 (1900) }	40,000	54.421
Sept. 27	302 W. 81st St., Marie E. Taylor to Fred Seggerman.....	31,500	17,000	54.313
Sept. 28	20 W. 76th St., Jas. Carlew to Thos. Bassford (1899, 20080 p.)	{ 70,000 (1900) }	40,000	57.014
243				
Nov. 16	4 lots north side 84th St., 100 ft. west West End Ave., Chas. Gahren to Henry Oppenheimer.	50,000	36,500	73.
Nov. 28	2083 Eighth Ave., David Richey to Martha B. Loshier...	{ 34,000 (1900) }	18,000	52.941
Dec. 29	Lots on Broadway 26 ft. north 76th St. 80 x 134 x 102.2 x 25 x 25 x 89.6½, C. F. Hoffman to Manhattan Congregational church.	80,000	54,000	67.75
		$2,124,100	$1,253,000	58.984

Q. Your testimony is the same for the six months prior to the six months I have previously mentioned, beginning January 1 and extending to July 1, 1899; sales by you and assessed values and computations are correct?

A. Yes, sir.

Re-cross examination.

By Mr. COMAN:

Q. The sale of January 29, southeast corner of Broadway and Ninety-second street, for $199,000, was there a building loan with that; was that sold to Bingham Brothers?

A. No, sir; that was sold to a woman named Axelrod.
Q. Was there a loan with it?
A. Yes.
Q. Could you tell how much?
A. No.

Recess.

244 *Hearing July* 3, 1901.

(NOTE.—The following testimony of Mr. Wells was taken for all cases, on July 3, 1901, and is a part of the record in this case, according to stipulation.)

JAMES L. WELLS, sworn for the plaintiff, in all the cases, testified:

Examined by Mr. PAGE:

Q. What is your business?
A. Real estate.
Q. How long have you been in the real estate business?
A. Over 25 years.
Q. What has been the character of the real estate business which you have done during that time?
A. I have bought and sold; I have sold very largely at public sales, and I have made many appraisements of property in all parts of the city; I confine my attention to the city of New York, particularly the boroughs of Manhattan and Bronx.
Q. Will you state more particularly the scope of your experience in the matter of appraising properties, what classes of property have you appraised, and for what institutions?
A. I have appraised pretty much all kinds of property where testimony was required or where evidence was desired in the purchase or sale of property or not, or loaning upon bonds and mortgages; I have appraised for banks and bankers, fire and life insurance companies, public institutions, title companies and estates; I think those embrace them.
Q. What public institutions have you appraised for in the city of New York.

The REFEREE.—Is it necessary to go into particulars? He is evidently qualified as an expert. I suppose they won't object on the ground he is not a competent expert.

245 Q. Have you held any official position at any time in connection with the tax department in the city of New York?
A. Yes, sir.
Q. Will you state what position you have held and when?
A. I have been a tax commissioner of the city of New York.
Q. For what period?
A. I was appointed in June, 1895, and I was legislated out of of-

fice on the first of January, 1898, by the charter for Greater New York.

Q. When you were a tax commissioner, did you continue at the same time your personal business of appraising and buying and selling property?

A. I did; I have continued that business for over 25 years.

Q. In the course of the time when you were in office, were you familiar with the assessments which were made against real property in the city of New York?

A. I was.

Q. Were you familiar with the real property against which those assessments were made in the city of New York?

A. Very much of it.

Q. Are you acquainted with the assessed values in the city of New York for the year 1899?

A. Yes, sir.

Q. In the course of that year did you have occasion to examine assessed values of property in connection with the actual value of property?

A. I have made such examinations quite frequently during that year.

Q. Are you able to state the relation between assessed value and actual value in case of real property in the city of New York for the year 1899?

246 Objected to upon the ground that it is not a proper method of proving valuation or percentage, and the witness is not competent to state in a general way. This is a conclusion called for and not a statement of fact; objection overruled; exception.

A. Yes, sir.

Q. What was the relation between assessed value and actual value, assuming the actual value to be 100 per cent. in the year 1899 in the city of New York?

Same objection, ruling and exception.

A. In my opinion it was approximately 67 per cent.

Mr. FIERO: I move to strike out the answer on the ground such statement is too broad and general, and not proper or competent. That it is a statement of an opinion and not a fact, and a statement of an opinion not based upon facts stated by the witness.

Motion denied; exception.

Cross-examination.

By Mr. COMAN.

Q. About how many parcels of real estate are there upon the assessment-roll in the city of New York?

A. I can't tell you.

Q. About how many were there when you were tax commissioner?

A. I couldn't tell you without referring to the figures.

Q. Isn't it about 240,000?

A. I should imagine there would be as many as that; I had those figures at one time.

Q. Out of that number of assessments, if that be the number, how many parcels are you personally familiar with the value of?

A. I should imagine I appraise in the neighborhood of 2,000 parcels a year in my business and that is scattered over the entire city.

247 Q. As to parcels of property which you have not appraised have you personal knowledge as to their condition or as to their value?

A. What do you mean as to their condition, their physical condition?

Q. Yes?

A. I know the property generally, the same as any real estate man knows it.

Q. You know the outside of a house, perhaps?

A. I go into the inside of a house when I make an appraisement.

Q. I am speaking of property which you have not appraised?

A. Certainly I don't know the interior of a house I have not been in.

Q. Then you don't know what it is worth?

A. Yes, you get a general idea of what property in a location is worth; it is very easy to ascertain the value of the land and it is very easy to ascertain the size of the house and its height and compute the value.

Q. When you come to appraise a house you go through it?

A. When I can go through it I do.

Q. You consider that an essential to an accurate appraisal?

A. Yes; I should want an appraiser to do that if I was going to buy a house.

Q. So that as to the various parcels of real estate which you have not appraised and have not personally inspected you don't consider that you know what their value is?

A. Approximately I do know.

Q. But not close enough to make an appraisal of it?

A. Yes, sir; in most cases.

Q. Do you know their assessed value?

A. Not without examining; no man can carry all those things in his mind.

Q. How many parcels of real estate in the city of New York do you know the assessed value of?

248 A. I don't carry the records around with me; they are public records; when I want to use them I go and use them the same as you use law books.

Mr. FIERO: I now move to strike out the answer of the witness on the ground that it appears that the evidence is not given from personal knowledge except as to a very small proportion of the property in the city and as incompetent and improper.

The REFEREE: As I understand this witness, as to a large number of parcels all over the city, he knows the actual value, and as to a large number of those parcels he knows the assessed values scattered through the city. He says that as to all those parcels the assessed value bears to the real value the relation of 67 per cent. That is the way I understand his evidence. I think that is competent. It is the only practical way to deal with such questions and I think it must be competent, and I refuse to strike it out. Otherwise you would have to take 240,000 parcels and go through with each parcel and that is wholly impracticable.

Defendant excepts.

It is conceded that the testimony given by Mr. Wells as to the relation between the value of assessed property and the actual value of real property in the city of New York as 67 per cent. covers the year which these certiorari proceedings are brought to review the assessment of.

(NOTE.—The following affidavit of Frank Bailey was read in evidence for all cases on September 4, 1901, and is a part of the record in this case, according to stipulation.)

Plaintiff's counsel offered to read in evidence the following affidavit of Frank Bailey with same force and effect as if the statements therein contained were orally sworn to before the referee:

Defendant's counsel objects to the same as immaterial and
249 on the same grounds heretofore made to the same class of evidence, but does not object to the form of the evidence offered.

Objection overruled. Exception.

STATE OF NEW YORK, } ss.:
County of Kings, }

Frank Bailey, being duly sworn, says that he is and has been for fifteen years with the Title Guarantee and Trust Company, and for six years its vice-president, and for eight years the secretary of the Bond and Mortgage Guaranty Company, and has had during that period charge of the business of said corporations in the borough of Brooklyn, city of New York.

That during the year 1900 the Title Guarantee and Trust Company passed on upwards of 5,023 titles of real estate situated in the borough of Brooklyn, either for the purpose of closing the sales of such real estate between the buyer and seller or for the purpose of negotiating loans upon said real estate through the said companies, and, in the regular course of business, this deponent knew the prices at which said property was transferred and the price at which it was appraised for the purpose of loaning money upon it and the assessed value thereof as shown by the assessment-rolls of 1900.

During the period of deponent's connection with the aforesaid corporations it has been necessary for him to acquaint himself thoroughly with the actual value of properties of all kinds in all the

different sections of the borough of Brooklyn, and deponent is thoroughly familiar with the values of all such properties.

During the past three years deponent has been greatly interested in the subject of assessment and taxation in the borough of Brooklyn, and has carefully investigated the ratio between the assessed and real value of properties throughout the entire borough of Brooklyn.

From actual knowledge of the sales and the selling prices
250 of at least one thousand separate pieces of property in the borough of Brooklyn during each of the years 1899 and 1900, and of the assessed valuations of a large proportion thereof upon the assessment-rolls of 1900, and from investigations separately conducted by deponent, and by the clerks of deponent, deponent has learned and believes the fact to be that the ratio between the assessed valuations upon the assessment-rolls for the year 1900 in the borough of Brooklyn and the actual value of real property in the said borough of Brooklyn averaged 65 per cent. The assessed values being above 65 per cent. of the actual value in some of the older wards and below 65 per cent. in the newer wards of the borough of Brooklyn.

Deponent verily believes that the average assessed valuation of all the real estate in the entire borough of Brooklyn upon the said assessment-roll of 1900 was about 65 per cent. of the actual market value of all of said real estate during said year.

FRANK BAILEY.

Subscribed and sworn to before me this 31st day of July, 1901.

JOHN L. SHERWOOD,
Commissioner of Deeds, City of New York,
Residing in the Borough of Brooklyn.

(NOTE.—The following testimony of Alexander Dumas was taken for all cases on July 16, 1901, and is a part of the record in this case, according to stipulation.)

ALEXANDER DUMAS, sworn for the plaintiff, testified:

I live at Flushing, Long island. I have lived in Queens county permanently about fifteen years. At the present time I have charge of the tax searching department of the Title Guaranty and Trust Company of the Borough of Queens. I have held that position ever since they organized the department, about two years ago. Prior to that I was cashier and deputy to the commissioner of the bureau of assessments and arrears, borough of Queens.
251 I held that position about two years. Prior to that I was in the real estate business in Flushing, Long island, dealing in real estate throughout the entire borough of Queens. I have made a list of sales which have come to my knowledge in the borough of Queens for the year 1900 and the latter half of the year 1899, together with a list of the assessed value of those pieces of real property upon the assessment books of that year. I have such a list. I

have figured the ratio between the assessed value and the value for which those properties were actually sold. That ratio is about 67 per cent.

Q. In your opinion, based upon this investigation, does that ratio hold together throughout the entire assessment for that year in the borough of Queens, taking it as an average?

Objected to as incompetent.

The REFEREE: Has he examined so as to know?

The WITNESS: I made a fair comparison of them.

By the REFEREE:

I give the assessed value and the sale value here. I took these at random from each ward in the borough.

Plaintiff's counsel offered the list in evidence.

Mr. COMAN: I would like to examine him before it goes in evidence.

The REFEREE: Certainly.

Cross-examination.

By Mr. COMAN:

I obtained the information in its entirety from brokers and dealers, through the entire borough, who are clients of the company. The words "Consideration in conveyance" is the appellation I classify them under. That is the amount of sale. I compared the records after obtaining this information and
252 found them correct. I obtained the information as to the consideration for the conveyance partly from the brokers who made the sale and partly through my connection with the company I represent.

By Mr. WELLS:

A large percentage of those deals were closed in my hands.

By Mr. COMAN:

The assessed value I took from the assessment-rolls. It would be impossible for me to take all the conveyances that went through my company in rotation; I had to obtain the information from the brokers and the dealers. I did use all the transactions that went through my company during 1900. I took all that the other brokers gave me. I didn't ask if they gave me all that they made. I asked them to give me their latest sales; I made no selection. They did not give me any list from which I picked. They were all during the latter half of 1899, 1900 and part of 1901. I did not tell those brokers what I wanted these sales for.

By Mr. WELLS:

About 60 per cent. of these deals went through my own hands.

By Mr. COMAN:

I cannot tell which ones, not from these records; I can if I am allowed time to pick them.

Defendant's counsel objected to the evidence so far as the information was derived from other brokers, upon the ground it is hearsay and incompetent.

By Mr. WELLS:

I compared the revenue stamps upon the deeds in each case with the expressed consideration, and they corresponded with the amount stipulated as the consideration.

253 By the REFEREE:

Q. Taking the 60, of which you have personal knowledge, would the average be the same?
A. Yes; if anything, I think the result would be smaller.
Q. Smaller how?
A. It would make it about 60 per cent.

By Mr. COLLIN: About 60 per cent. of consideration as compared with the assessed valuation; the assessed valuation would be about 60 per cent. of the actual consideration of the sale.

Mr. COMAN: I think I will withdraw that portion of the objection which refers to the information derived from brokers.

By Mr. COLLIN: The 67 per cent. spoken of as the assessed valuation is 67 per cent. of the actual consideration of the sales.

The statement was received in evidence, of which the following is a copy:

WARD No. 1.

Old Long Island City.

Vol.	Block.	Lot.	Assessed value.	Consideration in conveyance.
1	47	41	$1,900	$2,750
1	43	43	1,900	2,750
1	40	40	1,900	2,750
1	80	4	1,600	3,300
1	46	15	1,100	2,100
1	28	47	6,000	8,000
1	28	41	1,500	2,100
2	85	30–33	2,350	3,800
2	85	49	2,300	3,500
2	62	5	1,800	2,300
8	85	22–23	600	700
2	77	27	2,100	2,250
2	62	5	1,800	1,525
12	100	118	1,300	1,525

254

WARD No. 2.

Old Town of Newtown.

Vol.	Block.	Lot.	Assessed value.	Considera-tion in conveyance.
4	4	23	$1,000	$1,700
4	8	18–19	400	700
10	194	53	1,400	2,200
8	33	30	1,500	2,200
8	33	30	1,500	2,200
10	157	41	1,300	1,600
1	79	8 & 62	600	1,000
1	151	22	4,650	6,000
3	77	20	2,500	3,600
1	74	47	2,000	3,400
10	157	28–29	1,000	1,800

WARD No. 3.

Old Town of Flushing.

Vol.	Block.	Lot.	Assessed value.	Considera-tion in conveyance.
3	55	58–59	$2,100	$3,500
1	79	25	1,000	1,600
1	8	16	15,000	20,500
3	58	74	200	1,300
3	89	23	2,000	3,100
1	65	49	1,500	2,080
1	7	Street	2,000	3,000
4	120	26	2,500	4,200
3	89	13	500	700
4	44	9	1,000	1,600
3	75	51	2,000	5,250
3	151	2	1,500	1,700
3	37	45	2,000	3,800
3	82	18	2,500	4,100
3	93	55–57	3,100	4,000
3	77	20	2,500	3,600

255

Ward No. 4.

Old Town of Jamaica.

Volume.	Block.	Map.	Lot.	Assessed value.	Consideration in conveyance.
5		30	396	$1,600	$2,350
2	8		166	1,400	1,800
1	9		126	400	575
7	23		16	800	1,200
4	11		20 & 37	450	625
1	12		478	2,000	3,000
1	6		257	2,500	4,110
2	13		87	1,600	2,500
4	2		4	5,000	7,100
1	6		59	2,200	4,000
2	43		278	1,300	2,100
4	10		4½	5,000	8,100
1	32		356	1,400	2,500
4	20		331	1,800	2,600
6	24		340 & 342	2,100	3,000

Ward No. 5.

Part of Old Town of Hempstead, Known as Rockaway Beach, Arverne, and Far Rockaway.

Vol.	Block.	Lot.	Assessed value.	Consideration in conveyance.
2	60	109	$800	$1,300
1	52	1	2,200	3,800
1	3	48	7,100	10,240
2	24	62	2,400	3,600
1	54	46	700	1,000
2	19	11	2,000	3,500
1		19	3,000	4,500
1	17	53	1,900	2,700
2	54	36	2,000	3,000
1	27	87	7,000	10,500
1	55	13	700	1,000
1	56	3	1,000	1,500
1	39	12	300	525
1	64	42	600	850
1	39	32	300	525
2	72	15	4,000	5,800

256 *Hearing of September* 18, 1901.

It is further stipulated that the tax rate for the county of New York for the year of the special franchise assessment for which the certiorari proceedings are brought to review was .0224771.

It is further stipulated that a notice transmitted to the relator company, stating that an assessment on its special franchises had been made and that the total amount thereof was $15,828,600, and the State board would meet at its office at Albany on the 10th day of April, 1900, to hear and determine any complaint as to the assessment was of the following form:

No. 98.

(*Form A—Notice of Assessment and Hearing of Complaints.*)

OFFICE OF THE STATE BOARD OF TAX COMMISSIONERS,
ALBANY, N. Y., *M'ch* 20, 1900.

To —— ——:

You will take notice that under the provisions of the tax law relating to the taxation of public franchises as real property, the State Board of Tax Commissioners has made an assessment upon special franchises constructed, maintained or operated by you, and fixed the total valuation thereof at the sum of —; and fixed the valuation thereof in the respective cities, towns and tax districts in which such special franchise is situated, as follows:

City of New York, borough of Manhattan..... $

257 You will further take notice that this board will meet at its office in the city of Albany on the 10th day of April next, at 10 o'clock a. m., to hear and determine any complaint concerning such assessment.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS,
By PETER DEYO, *Secretary.*

It is also stipulated that a notice served upon all the other relator companies whose proceedings are now pending before the referee was similar in form.

The following is a stipulation in the Metropolitan case, which, by stipulation, becomes a part of the testimony in this case:

It is stipulated in all cases, subject to the same objection as heretofore made by defendants to the same class of testimony, and the same ruling and exception, that the total assessed valuation of real estate in the city of New York for the year the taxes of which these

certiorari proceedings are brought to review, by counties, were, viz.:

Name of county.	Assessed value.
New York	$2,178,605,905
Kings	609,822,267
Queens	103,752,600
Richmond	40,264,692

The percentages which the assessed values bore to actual values as fixed by the State Board of Tax Commissioners for said year, in said counties, were as follows:

Name of county.	Percentage.
New York	67
Kings	68
Queens	80
Richmond	66

258 (NOTE.—The following statement is taken from the record in the Metropolitan Street Railway Company's case and is a part of the record in this case, according to stipulation.)

Plaintiff's counsel, Mr. Page, offered in evidence a statement based upon the records for the year during which these certiorari proceedings are brought to review, of the State Board of Tax Commissioners, showing the aggregate tentative valuation of special franchises and the aggregate final assessments of special franchises made by the State board for that year; the aggregate of the tentative being $307,290,806; the aggregate of the final valuations being $266,202,759, and the difference being $41,088,047, between the tentative and the final valuations or assessments made by the State board of assessors.

Objected to as incompetent and immaterial; objection sustained exception.

Hearing of November 26, 1901.

Plaintiff's counsel offered in evidence, in all cases, statement, no objection being made by defendant's counsel to the correctness of the facts therein contained, as follows:

That in proceedings heretofore begun in the supreme court to review the assessment fixed on the special franchises of certain companies for the year the taxes of which the present certiorari proceedings have been brought to review; the defendants in the same are the same defendants as in these proceedings, viz.: George E. Priest, J. Edgar Leayeraft, Lester F. Stearns as tax commissioners

of the State of New York, and constituting the State board of tax commissioners.

259 That in the proceedings of The People of the State of New York *ex rel.* New York Telephone Company against The State Board of Tax Commissioners, being one of the proceedings above referred to, findings were made and entered [illegible] and made part hereof were entered thereon by the court, containing the following provision:

It is further adjudged that said assessment of the relators' special franchises as made by the State Board of Tax Commissioners and entered upon the assessment-rolls of the various boroughs of the city of New York for the year 1900, as follows:

"At the sum of two millions, six hundred and fifty thousand, one hundred forty-five ($2,650,145) dollars, in the borough of Manhattan, and two hundred ninety thousand, seven hundred thirty-eight ($290,738) dollars in the borough of the Bronx; amounting in all to the sum of two millions, nine hundred and forty thousand, eight hundred eighty-three ($2,940,883) dollars, is excessive and unequal and the equalized valuation of said special franchises for the year being and hereby fixed as follows:

"In the borough of Manhattan, the sum of one million, seven hundred seventy-five thousand, five hundred ninety-seven and fifteen one-hundredths ($1,775,597.15) dollars. In the borough of the Bronx, the sum of one hundred ninety-four thousand, seven hundred ninety-four and forty-six one-hundredths ($194,794.46) dollars.

"Amounting in all to the sum of one million, nine hundred and seventy thousand, three hundred and ninety-one and sixty-one one-hundredths dollars ($1,970,391.61), to which amount the said assessment is reduced."

That findings have been made, and orders confirming the said and reducing assessments have been entered thereon containing provisions of similar tenor in case of other companies, being

260 the companies whose proceedings are above referred to, the names of said companies and the amounts of said assessments as fixed by the said board and the amounts of the same as reduced by the court and the percentage which the reduced assessment constitutes in amount with respect to the original assessment fixed by the State board as of January 2, 1900, being as follows:

Name of corporation.	Assessed special franchise value reported	Equalized special franchise value reported	Ratio of assessed to equalized value	Amount of increase in assessed value
Lackawanna Railway Co.	$2,307,000 00	$2,753,000 00	00	00
Hammondsville Water Co.	10,000 00	12,000 00	00	00
Suffolk Traction Co.	400,000 00	500,000 00	00	00
Suffolk Railway Co.	1,270,000 00	1,588,000 00	00	00
Bolton River Telephone Co. (Adirondacks)	48,000 00	60,000 00	00	00
Bolton River Telephone Co. (Albany)	100,000 00	125,000 00	00	00
Lackawanna Gas and Electric Co.	1,376,000 00	1,720,000 00	00	00
Grandview Street Railway Co.	1,946,400 00	2,433,000 00	00	00
Empire City Gas Co. (Manhattan)	1,024,000 00	1,280,000 00	00	00
Empire City Gas Co. (Bronx)	48,000 00	60,000 00	00	00
N. Y. Telephone Co. (Manhattan)	2,400,000 00	3,000,000 00	00	00
N. Y. Telephone Co. (Bronx)	240,000 00	300,000 00	00	00
N. Y. and N. J. Telephone Co. (Queens)	160,000 00	200,000 00	00	00
N. Y. and N. J. Telephone Co. (Brooklyn)	720,000 00	900,000 00	00	00
N. Y. and N. J. Telephone Co. (Richmond)	80,000 00	100,000 00	00	00
Bay Gas Co.	400,000 00	500,000 00	00	00

The amount set forth in the last column of the foregoing statement is the amount as fixed by the State Board of Tax Commissioners as the percentage which the assessed value bears to actual value in the counties in which the companies' properties above mentioned are situated.

Adjusted to an inclusive and comparable basis. [illegible] adjustment is made to the statement on the ground that the facts contained in the same are not true.

21 *Hearing. December 6, 1904.*

FRANK J. BELL, sworn for the defendants in all cases testified:

Examined by Mr. Evans:

Q. Where do you reside?
A. Bloomfield, N. J.
Q. What is your business?
A. Deputy tax commissioner of the city of New York.
Q. What are your duties as such?

A. I am assigned as chief in charge of the deputies making the real estate assessments.

Q. How many deputies are there in the office of the commissioner of taxes of the city of New York in the real estate bureau?

A. About forty-six.

Q. As to the nature and character of your duties, whether supervisory or otherwise?

A. My duties are supervisory.

Q. How far does that enable you to obtain knowledge with regard to the actual value as well as assessed value of real estate in the city; state a little in detail the character of your duties?

A. The assessed values are constantly before me; the reports of the deputies making changes in assessed values are always made to me and from me to the commissioners; tabulated by me and presented to the commissioners in aggregate and in different forms for their consultation over them; I am constantly meeting taxpayers who are contesting and criticising our assessed valuations; those are the particular forms in which the matters come before me.

Q. As to your actual knowledge of values, how far does that extend and how obtained?

A. I necessarily get some knowledge of the actual values of real estate from these observations.

262 Q. Have you made any personal examination in the office of the register of the city of New York with regard to sales of real estate as compared with assessed values within the past few days?

A. Yes, sir; I compared the list which I presented when I was last here.

Q. List of what?

A. List of sales in Manhattan; I have compared each record, each instrument, taking the grantor's and the grantee's name, the description of the property, the amount it sold for, the date of the instrument and in some cases the reference to other instruments referring to the same transaction.

Direct examination (continued):

Mr. BELL: I have examined the list of sales of properties in the borough of Manhattan, covering two pages of cap paper, and find that, with two exceptions, they are on or near the line of Broadway, north of Forty-second street, the line of the rapid transit improvement, where transfers have been numerous, where speculation has been rife and where considerations (I will not call them values) have been advancing with each transfer. Such considerations cannot be fairly used in comparison with assessed values to arrive at percentages, and especially to fix a fair percentage for the whole city. Such considerations, it is true, are the index of the feeling of speculators and may or may not later be sustained as real values.

Even where these properties are properly improved the incomes do not warrant the values as indicated by the considerations ex-

pressed, the interest on mortgages, the taxes and the fixed charges together bearing such a large ratio of percentage to the income that holders are in many cases wiped out by foreclosures.

The conservative policy used in fixing values for taxation as prescribed by law, viz., "the amount for which, under ordinary
263 circumstances, they will sell," would not warrant following immediately in the wake of speculative transfers. It is only the settled and fixed values which are used as a basis for assessed valuations.

Of the two exceptions on the list previously referred to, I will call attention, first, to the one at the southwest corner of Second avenue and Seventy-second street, which is given as having been sold by Martin Metzger to Egan & Hallecy, at $49,000, and assessed at $44,000. The sale in this case was of land 59 feet wide, while the assessed valuation quoted was on only 30 feet. The grantees in the transfer are parties whose names appear in several of the transfers quoted on the list; they are speculative builders, frequently on building loan schemes, and it is in such transfers that fictitious amounts are so frequently used in their deeds, covering not alone the real value of the property, but a consideration for the loan as well. This is indicated by the record of sale in this case to those who are accustomed to "reading between the lines." The mortgage is given as $23,000, the consideration named "valuable consideration and $100."

The second exception is No. 202 Broadway, which is recorded as having been sold at $300,000, and which is assessed at $270,000, indicating the relation of the assessed value to the consideration expressed of 91 per cent., or nearly full value. In this section of the city values are well settled and definite, and the assessed valuations are so close to the amounts for which they will sell under ordinary circumstances, that the whim of the purchaser in his anxiety to secure a certain piece of property, or the embarrassment or caprice of an owner in his desire to sell, frequently results in transfers above or below the assessed valuation of the commissioners. There is probably no other city where these whims and embarrassments exist to the extent they do in New York. I quote in this connection the sale of No. 67 Wall street, which sold on September 25, 1899, at
264 $180,000; it was assessed at $210,000. I also quote No. 210 Broadway, sold on May 15, 1901, at $105,000, and was assessed at $140,000. I will state definitely and particularly that all three of these properties are assessed in proportion to adjacent and similar property.

A further reason, tending to show low percentage, is that the assessed valuations are placed in the fall (commencing the first week of September) of the year previous to the one in which taxes are payable, in October. During this time (more than twelve months) several transfers sometimes occur on the same piece of property, and when prices are booming, consequently the result is a lower percentage for the assessed valuations. All this, in connection with the fact that, as a rule, it is only active properties that sell and are

transferred, and with which a comparison may be made, and that the great mass of property is in a normal condition, and is not sought for by purchasers and is not transferred, tends to show that the whole is more nearly assessed at its real value than would appear alone from the transfers of the comparatively few active pieces, representing only a small fraction of the entire city.

I attach a list of a few transfers, covering every section in Manhattan, which more nearly show the correct situation than the list of special pieces shown me, covering only the one section of the city, and which is beyond peradventure the most speculative of any that could have been selected.

MANHATTAN.

Section 1.

	Assessed val.	Record of transfer.		Percentage.
22 Chatham Sq	$11,000	Apr. 13, —	$12,500	88
105 Division	7,000	Jun. 9, —	7,800	89
253 South	19,000	Sept. 11, —	18,000	105
67 Wall	210,000	Sept. 25, 1899	180,000	116
119 Baxter	16,000	July 8, 1899	17,100	93
396–398 Canal	37,000	July 14, 1899	41,250	89

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Section 2.

	Assessed val.	Record of transfer.		Percentage.
528–530 6th St	$27,000	Jan. 6, 1899	$31,000	87
14 E. 19th St	18,000	Feb. 27, 1899	19,240	93
153–55 Spring	85,000	Jun. 1, 1899	92,000	92
386–388 W. B'way	50,000	May 12, 1899	48,500	103

Section 3.

232 W. 15th St	$7,000	Apr. 17, 1899	$8,000	87
516–522 W. 35th St.	38,000	May 1, 1899	41,000	92
3 & 5 W. 22d St	80,000	Jun. 2, 1899	90,000	89
362 Third Ave	37,000	Apr. 14, 1899	40,000	92
49–55 W. 27th St	365,000	Apr. 27, 1899	400,000	91

Section 4.

254 W. 88th St.	$13,000	Feb. 17, 1899	$15,000	90
32 W. 66th St.	10,000	Mar. 8, 1899	10,000	100
N. E. c. Riverside & 84th St	64,000	Mar. 8, 1899	60,500	105
507 W. 56th St.	12,000	Apr. 13, 1899	12,250	100
N. W. c. Cen. Pk. W. & 91st St.	140,000	May 17, 1899	150,000	93
118-122 W. 61st St.	57,000	Oct. 13, 1899	60,000	95
1680-1684 B'way.	140,000	Nov. 20, 1899	150,000	93

Section 5.

446 E. 72d St	$4,500	Jan. 9, 1899	$4,600	98
168 E. 73d St.	11,000	Jan. 17, 1899	11,000	100
108 E. 54th St.	21,000	Jan. 19, 1899	20,000	105
238 E. 45th St.	10,000	Feb. 24, 1899	9,000	111
800 Lexington Ave.	14,000	May 16, 1899	15,000	90
19 E. 56th St.	46,000	Oct. 2, 1899	50,000	92

Section 6.

	Assessed val.	Record of transfer.		Percentage.
26 W. 115th St.	$10,500	Nov. 18, 1899	$12,000	87
117 E. 129th St.	6,500	July 15, 1899	7,750	83
417 E. 119th St.	6,000	Apr. 29, 1899	7,500	80
2109 Second Ave	27,000	Sept. 9, 1899	30,750	87

Sections 7 and 8.

474 W. 144th St.	$10,000	Sept. 7, 1899	$11,000	90
285 W. 147th St	12,000	Oct. 12, 1899	13,500	88
140th St., s. s., 100 ft. E. of 10th Ave.	4,000	Mar. 9, 1899	5,000	80
N. s. 167th St., 77.3 ft. W. of Amsterdam Ave	5,500	Feb. 2, 1899	6,000	91
320 Riverside Drive	75,000	May 10, 1899	77,500	97
541 W. 125th St.	13,500	Jun. 20, 1899	15,000	98
238 W. 134th St.	18,000	Jun. 30, 1899	18,000	100
221 W. 135th St.	7,500	Jun. 21, 1899	8,000	93
180-182 W. 125th St.	36,000	Sept. 26, 1899	40,000	90
230 W. 131st St	10,000	Sept. 27, 1899	10,000	100
169 W. 97th St.	9,000	Sept. 23, 1899	10,000	90
277-279 W. 127th St.	30,000	Dec. 6, 1899	30,000	100
248 W. 124th St.	15,500	Dec. 13, 1899	11,000	114

I have also read the evidence of Mr. Alexander Dumas, of the borough of Queens, and examined, at some length, the list of sales appended thereto.

There is probably no borough in the city in which exists so vast a difference in the judgment of value as in the borough of Queens. Much of the property was assessed prior to the Greater New York charter, so far beyond its value, that it was hard to realize the exact situation, or to believe evidence of real value.

Mr. Dumas quotes seventy-two pieces, which, he claims, are assessed at 67 per cent. of the record of the sales. Without going into the question of these sales I will simply quote seventy-two other
267 sales, taken from every ward in the borough, which are fully recorded and well authenticated, in which the assessed valuation bears to the selling price the percentage of 111 per cent., shown as follows:

WARD 1.

Vol.	Block.	Lot.	Assessed value.	Amount sold for.	Date.
1	30	22	$25,000	$18,700	Apr. 4, 1900
2	79	29	1,000	1,000	Mar. 1, 1899
3	29	26	1,900	1,500	Jan. 8, 1900
4	125	13	3,000	2,985	Apr. 16, 1900
	125	13	2,000	3,242	July 20, 1900
	122	2	1,200	1,150	Jan. 21, 1899
	134	1	2,200	2,000	Aug. 5, 1898
	138	19	1,200	1,175	Sept. 2, 1899
5	155	64-66	3,200	3,075	Feb. 21, 1900
	171	33	600	650	Jan. 9, 1900
6	263	20	2,700	3,000	Oct. 22, 1899
7	8	4	450	350	Feb. 15, 1899
	24	50	200	180	Apr. 22, 1899
	21	51	200	180	Apr. 22, 1899
8	48	18	20,000	20,000	June 29, 1900
	53	35	700	450	Feb. 15, 1899
	82	27	800	600	July 15, 1899
	48	1	11,000	10,000	Oct. 11, 1899
	45	2	1,700	1,825	Oct. 5, 1899
9	125	10	1,800	1,500	July 18, 1900
	126	8	2,800	3,100	July 8, 1899
	126	8½	4,200	4,600	July 8, 1899
	111	15	1,300	1,300	Aug. 5, 1898
10	171	39	350	300	Dec. 28, 1898

WARD 2.

1	15	49	$200	$150	June 4, 1900
6	23	1	1,400	1,000	May 10, 1900
7	16	26	300	100	May 10, 1900
	16	26	300	100	May 10, 1900
8	72	9	125	125	May 7, 1900
	20	12-14	800	875	June 1, 1900
	29	22	200	150	June 15, 1900
	29	26	200	150	June 15, 1900
7	20	23	600	600	May 12, 1900
10	157	41	1,300	1,600	May 21, 1900
4	39	22	2,500	2,500	May 11, 1900
	38	53	5,000	4,000	May 18, 1900
10	171	11	150	150	May 22, 1900
7	113	18	1,100	1,000	June 3, 1900
	240	240	2,000	2,000	July 14, 1900
1	41	15	500	500	July 18, 1900
6	36	30	900	800	May 10, 1900

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WARD 3.

Vol.	Block.	Lot.	Assessed value.	Amount sold for.	Date.
3	16	1	$5,000	$5,000	Nov. 13, 1900
4	152	11	160	140	Apr. 3, 1901
3	40	27	6,000	5,000	Oct. 25, 1900
4	117	23	5,000	4,500	Apr. 23, 1901
4	132	51	2,000	2,220	Mar. 14, 1901
4	101	27–30	160	150	Apr. 11, 1901
3	12	36	4,500	4,750	Mar. 22, 1900
1	19	25	1,500	1,500	" 14, 1901

WARD 4.

1	2	150	$1,800	$2,000	1899
2	62	14	1,000	800	1900
	53	25	400	350	1900
		35	1,400	1,400	1900
	38	10	1,200	1,200	1900
3	16	764	300	300	1900
	3A	69	150	125	1900
4	12	12	3,000	2,840	1900
	12	302	2,000	1,800	1900
	13	281	1,000	1,100	1899
5	25	601	600	600	1900
	26	156	150	150	1900
	26	118	200	200	1899

WARD 5.

1	58	95	$2,300	$2,500	Oct. 9, 1900
1	44	60–61	5,000	5,000	Sept. 18, 1899
1	13	20	2,000	2,000	Jan. 18, 1899
	15	19	5,000	5,000	May 18, 1899
	6	1	2,500	1,600	Apr. —, 1899
1	26	59	9,500	5,000	Dec. 6, 1900
1	12	28	4,000	3,700	Jan. 28, 1901
1	62	76	2,200	1,500	Nov. 15, 1900
2	61	8	750	750	Apr. 5, 1901
1	51	65	2,600	1,000	Nov. 9, 1900
			$181,545	$162,887	

111 per cent.

269 Cross-examination.

By Mr. PAGE:

Q. In reference to your testimony to-day, have you consulted with other officials in the tax department?

A. I have had several conversations with the president and one conversation with one of the commissioners.

Q. Has your conversation with the president been with reference to the testimony you were to give to-day?

A. No, sir; there was nothing said about that; we talked about the paper which I brought up on my last visit.

Q. That paper which you now refer to was a paper with the contents of which Mr. Feitner is familiar?

A. Yes, sir.

Q. That reflects his views as well as your own, does it not?

A. Yes; I may say it does because he approved it; he said he thought that was the situation.

Q. Mr. Feitner has been for several years last past, and still is the chairman of the tax department?

A. He is president of the board, and was 16 years ago, when I went there, a member of the board.

Q. He was a member of the tax board of the old city of New York, and at the present time is president of the tax department of the Greater City of New York?

A. Yes, sir.

Q. Mr. Feitner occupied that position in 1899 and 1900, did he?

A. Yes, sir; both years.

Q. So that in coming here to-day you give the official views of the tax department upon this subject, do you not?

A. I may incidentally do so, but I don't think it was arranged I should do so.

Q. It was known you were coming up here to-day to testify in this proceeding?

A. Yes, sir.

270 Q. You came with the approval of the president of the tax board?

A. Entirely so.

Q. And the other members of the board as well?

A. Yes, sir; although I don't think there was any formal result or resolution about it; I know there was not; they all knew about it.

Q. They all knew of the fact that this proceeding was going on in which was up for examination the question of the ratio between assessed value and actual value in the city of New York?

A. Oh, yes; they knew that.

Q. Into how many tax sections for the purpose of assessment under the block system is the city divided at the present time, the borough of Manhattan?

A. We call them sections, but the tax districts are not similar.

Q. There is a division by sections?

A. Yes, sir; there is a division by sections.

Q. How many are there in Manhattan?

A. Eight in Manhattan; there are twelve tax districts.

Q. These sectional divisions which you have referred to are eight in number and cover the borough of Manhattan?

A. Yes; those are the block land map tax sections.

Q. Are these fairly equal so far as the territory included in each section is concerned?

A. No, sir; very unequal.

Q. How does the first section compare with others?

A. The first section runs to Grand street nearly straight across from river to river.

Q. That is one of the most valuable of all sections?

A. Much the most valuable; the second section extends to Fourteenth street, straight across.

Q. That is another valuable section?

A. Yes, sir.

Q. How about the fourth section?

A. The fourth section is a very valuable section called the
271 West Side, extends from Fifty-ninth street to Ninety-sixth street, west of Central park and Sixth avenue.

Q. These sections are fixed by law in the charter of the city?

A. Yes, sir; the land map law.

Q. About two years ago an article appeared in the "Record and Guide," stating what the tax department methods were and how lands and buildings were valued for taxation; you remember that, I take it?

A. I think I do; yes.

Q. In this number of the "Record and Guide" to which I refer the article which relates to tax departments and method is based, is it not, as you recall it, upon an interview with yourself and another interview with Mr. Feitner?

A. Yes, sir.

Q. You read that article, didn't you, after it appeared?

A. Yes; I did.

Q. That correctly reported your statement, did it not, as made at that time?

A. That is my recollection of it; yes; I don't remember distinctly now; an indefinite recollection I have that it did agree with my views.

Q. (Presenting same.) I suppose there is no question but what those are sheets from the "Record and Guide"?

A. Yes; that was just after the investigating committee had criticized our methods.

Q. The Mazet committee?

A. Yes, sir.

Q. This is the article in the "Record and Guide" to which we have previously referred?

A. Yes, sir.

Q. This article at this time was an article that was given out by yourself and Mr. Feitner after you had gone over the article?

A. I prepared the article.

Q. The entire article that appears there?

A. That is my recollection.

272 Q. Mr. Feitner saw that before it went out?

A. Oh, yes.

Q. The figures and statistics which are contained in that article were prepared by you in the same way as the figures which are given in your testimony on direct examination, weren't they?

A. Yes, sir.

Q. That is to say, you went to work and prepared your data in the same way in each case?

A. Yes, sir; except that I didn't go to the register's office on these; I took these from the "Record and Guide" and from the "Law Journal;" in that sheet I have gone over to the register's office and compared them.

Q. These figures which appeared in your direct-examination, in the first instance, were prepared in the same way?

A. Yes, sir.

Q. You went over and verified them to the register's office?

A. Yes, sir.

Q. In your verification you found that the statements in the "Record and Guide" were correct; in other words, there wasn't anything which required correction after your verification?

A. In the document presented here?

Q. Yes?

A. I found only two discrepancies.

Q. Those were slight?

A. Minor ones, and one correction was made in the register's office.

Q. You have no doubt about the correctness of the figures which appeared in that article?

A. None whatever.

Q. You have spoken about the Mazet investigating committee and the fact that this article appeared shortly afterward; there was an issue investigated by that committee among others as to the ratio between actual and assessed value in the city of New York?

A. That wasn't the point here.

273 Q. That issue was considered before the Mazet committee?

A. I don't think so; the issue was altogether on our percentage of increased valuation, the unevenness of it.

Q. You were present before the Mazet investigating committee, weren't you?

A. I was part of the time.

Q. Mr. Feitner was there part of the time?

A. Yes, sir.

Q. You were there when Mr. Feitner testified, weren't you?

A. On one occasion I was; I think he testified on two or three occasions.

Q. Was it the first or last occasion when you were present?

A. That I can't remember; I remember of hearing him testify.

Q. In the course of this testimony—and I now read from volume 4 of a volume entitled, "Investigation of the Public Offices and Departments of the City of New York, 1899"—the minutes of the hearing which took place on the 10th of October, 1899, it is from

the testimony of Mr. Thomas L. Feitner, page 4020—I should add that this volume is officially entitled, "The Report of the Special Committee of the Assembly, appointed to investigate the public offices and departments of the city of New York, and of the accounts therein included, transmitted to the legislature January 15, 1900. Printed by James Lyon, State printer." Before I ask this question I presume the counsel for the defendant will have no objection to my asking this stipulation, that this printed volume is a correct transcript of the minutes of those proceedings.

Mr. FIERO: If you ask the question we will raise the question.

Mr. COMAN: It is the official edition.

274 Mr. FIERO: We are not going to make an objection upon that ground. Ask your question and we will make the objection on the ground the evidence is not competent or proper as to what Mr. Feitner said.

Mr. PAGE: You have no objection to it going on the record it is agreed this is the official edition and it is a correct transcript of the minutes?

Mr. FIERO: Say you read from the official edition and that will cover *cover* the whole ground.

Q. I read from the official report of the special committee of the assembly appointed to investigate the public offices and departments of the city of New York, and of the accounts therein included. Transmitted to the legislature January 15, 1900, no objection being made to the same as not being a correct transcript of the minutes of the proceedings of that committee. I read as follows, with the explanation above given to Mr. Bell: "The Witness (that is Mr. Feitner): That is the very serious question in dispute. From our examination in our department, unofficially, we are satisfied that the rest of New York State is not assessed more than 40 per cent. of the fair general value, while we always maintained here that we ran from 60 to 65 or 70 per cent., and fairly maintained it; so that in place of being anything added to it there ought to be at least two or three hundreds millions of dollars taken off the valuation of New York city." Do you recall Mr. Feitner gave testimony of that tenor?

Objected to as incompetent, irrelevant and immaterial.

The REFEREE: I don't see how it is competent, what Mr. Feitner swore to or testified to on that occasion.

Mr. PAGE: I am going to ask Mr. Bell if he was cognizant of this testimony having been given, and the further question is of obvious propriety if he knew about it.

275 The REFEREE: You can question him about it; you may ask him what his view was at that time. I don't see how it is important to ring in here what Mr. Feitner testified to, or how it is competent.

Mr. PAGE: The point is Mr. Feitner was before that committee with Mr. Bell, representing the New York tax department, that was being investigated, and here was a statement made by the pres-

ident of the tax board and Mr. Bell was present at the same time and knew of this testimony being given, and I want to go on from this point and ask him if he concurred in it, or similar questions to that effect. I first want to know if he knew it was given.

The REFEREE: You can get at it directly by asking him what his view was at that time in 1899 upon this very question.

Mr. PAGE: Your honor sustains the objection?

The REFEREE: Yes.

Plaintiff excepts.

The REFEREE: For the purpose of refreshing his memory you can call his attention to that, but after all it is his evidence as to the comparative value. He knows now what you are after. Just ask him the question.

Mr. PAGE: This is offered in connection with the witness's previous testimony and also as an official statement by the head of the tax department of the city of New York.

The REFEREE: I don't think in either aspect it is competent. You have got this witness here now, take his evidence and his judgment on that question.

Q. Has your recollection been refreshed by hearing me read the statement from the report of the committee?

A. It has been refreshed as to the circumstances; I didn't hear that testimony.

276 Q. Did you afterward hear of such testimony having been given?

Objected to as hearsay; objection overruled; exception.

A. Yes, sir.

Mr. FIERO: We now move to strike out the last answer that he heard Mr. Feitner give this testimony, on the ground it is incompetent and improper.

The REFEREE: I will strike it out if there is nothing more to follow it.

Q. Did you ever have any conversation with Mr. Feitner and seek to correct testimony of that character?

Objected to; objection sustained; exception.

Q. Did you ever take any exception to Mr. Feitner's testimony as given before the Mazet committee on the ground that you disagreed with him?

Objected to; objection sustained; exception.

Mr. FIERO: I take it that answer which we move to strike out goes out.

Mr. COMAN: We move to strike out all of the evidence with reference to the examination of Mr. Feitner before the Mazet committee.

The REFEREE: Let us see what his offer is.

Mr. PAGE: I now offer in evidence the concluding portions of the article from the "Record and Guide," a paper published in the city of New York, dated October 28, 1899, page 637, which article the witness has previously verified as an article which he prepared. I offer that part which is marked.

The REFEREE: That is all that is pertinent, is it?

Mr. PAGE: That is all that is pertinent.

Mr. FIERO: We don't think so.

277 The REFEREE: You can offer the balance.

Mr. FIERO: We object unless the whole paper is offered; a portion ought not to go in unless all is offered.

Mr. PAGE: We offer that part.

The REFEREE: You offer what portion you choose to.

Mr. FIERO: That we object to as immaterial, incompetent, not sufficiently proved and irrelevant.

The REFEREE: The witness testified they were his figures; the evidence is competent on cross-examination.

Defendant excepts.

The following is a copy of the portion offered:

Record and Guide, Page 637.

The tax valuation of the Bennett building was increased from $600,000 to $750,000. This building occupies the whole front, from Ann to Fulton streets, on the west side of Nassau. It covers 10,200 square feet and is 11 stories high. The land value as fixed by the department is $60 per square foot, which would be equal to $612,000; the building, 11 stories, contains 112,200 square feet of floor surface and the factor employed is $448,000; total value, $1,060,000; assessed, $750,000. There is no doubt about the value here, as there are a number of sales to show such values, and the factor per square foot of floor surface cannot be seriously at fault. What is noticeable in all these instances is that the assessed value bears about the same relative proportion to actual value as ascertained by the formula of the department, and so far as they go sustains its claims of equality of assessment. In the following list of properties, sold since the assessments were raised this year, the testimony on this point is not so unanimous, but it serves to show that the tax valuations placed upon downtown Broadway and Fifth Avenue properties were not

exercise as compared with those of parcels located in other thoroughfares and sections:

No.	Location	Assessed value		Sold for
		1906.	1910.	
832-836 West Broadway		$10,000	$10,000	$10,750
38-40 Liberty		240,000	270,000	300,000
35 Broadway		105,000	105,000	150,000
149 "		115,000	120,000	200,000
41 Nassau		25,000	30,000	45,000
3-5 West 34th		150,000	175,000	240,000
3-5 West 35th		30,000	35,000	45,000
1638-1645 Broadway		600,000	1,700,000	2,750,000
1573-1577 "		240,000	300,000	400,000
805-809 "		140,000	165,000	225,000
61-65 Walker		85,000	90,000	95,000
S. W. cor. Broadway and Broome		250,000	300,000	350,000
35-39 Bond		200,000	240,000	300,000
130-136 Washington		75,000	100,000	140,000
35 Cortlandt		45,000	60,000	80,000
11 Park row		110,000	140,000	175,000
385-389 Pearl		80,000	95,000	110,000
34-36 Frankfort		45,000	50,000	75,000
30 Beekman		45,000	50,000	75,000
105 West 125th		14,000	15,000	20,000
101 West 23d		25,000	30,000	40,000
142 West 24th		6,000	8,000	12,000
114 West 26th		6,000	10,000	15,000
110 West 30th		11,000	14,000	20,000
81 West 40th		14,000	25,000	40,000
849-851 9th avenue		12,000	14,000	20,000
253 9th avenue		24,000	27,000	40,000
87 West Forty-sixth		10,000	12,000	20,000
87 West 49th		25,000	25,000	30,000
300-312 4th avenue		270,000	350,000	400,000
7 West 30th		7,000	9,000	12,000
9 West 27th		10,000	20,000	30,000
251 9th avenue		140,000	160,000	200,000
699 3d avenue		25,000	27,000	35,000
60 West 24th		10,000	20,000	25,000
20 East 40th		25,000	25,000	30,000
570 Madison avenue		35,000	40,000	45,000

The Referee: On your motion everything that was said by Mr. Palmer on that examination is stricken out.

Mr. Hess: That is the examination before the Street committee?

The Referee: Yes.

Plaintiffs except.

Mr. Palmer: We offer the testimony of the assistant

579 The following is a copy of the petition offered by Robertson's counsel:—

(*Record and Guide*, page 685.)

The Department Method.

How land and buildings are valued for taxation.

The system under which the values of their properties are assessed for purposes of taxation must form a matter of strong interest to property owners. Knowing this, when the charter required the new department to "establish a just and equal relation between the valuation of property in each borough and throughout the entire city," the *Record and Guide* endeavored to obtain for its readers a description of the working process by which this was to be brought about. The immense amount of work thrown on the new department by the charter made it for a long time impossible for any of the officers to offer the time to supply the necessary information. Many have other causes of delay have crept in among them the determination of the department not to make any statement for publication until an answer to questions of fact could be considered one or another of the parties to the controversial petition. Now however the *Record and Guide* is able to describe the process of valuing real property for the purposes through the courtesy of the new department.

What has to be determined is this: — Is the department to go to work upon accurate knowledge — values as shown by the sales — or to make haphazard calculations of an amount by political and personal preferences. Whether or not this will be the result, the danger of being unfairly assessed as compared with the neighbor or whether the assessments are really equitable, and equally made. In the opening conversation with a *Record and Guide* representative, President Feitner said: — "You must get rid at the idea, if you have it, that the department recognizes any particular value which is to be taken as a maximum value for our purposes. The true test of value for public use is actual or market value. What we endeavor to arrive at is the fair market value of the property, that is what it would reasonably be worth if placed on the market and the difference between the ultimate results of our calculations and the amount placed on the assessment rolls is brought about by the conscientious endeavors to maintain this position."

Mr. Feitner [illegible] having charge of the real estate, the tax system and further: — The system [illegible] adopted by the department for ascertaining values are based upon the most careful experience of a good many years and that it produces results as near to the correct [illegible] as the nature of the case admits. [illegible] have taken place in the past year. Errors will arise in connection with [illegible] are certified as soon as discovered. The interests of property [illegible]

raise of values ($30,000 to $60,000) on a small property, No. 18 Mercer street, was made. This was a clerical error, and on the application of the owner, made April 11, 1899, and acted upon by the commissioners May 26, was reduced to the original assessment, $30,000. The same may be said of the property at the northeast corner of Ann street and Theatre alley, raised from $36,000 to $90,000, and on the application of the owner, dated April 4, 1899, reduced to $70,000 on May 24, by the commissioners.

"The system of arriving at valuations is: In regard to the land to employ the ordinary methods of the experts, taking size (p. 636), adaptability to use, recorded sales of that and similar parcels into consideration; and, in regard to buildings, to employ factors of value of so much per square foot of floor surface that the experience of the department has shown to be fair. These for tenements run from for a common one $1.25 to $2 for a flat; for stores of a good class, with iron front they will run to $2.50. When it comes to steel construction buildings, the lowest factor of value is $3, and that only for a mercantile steel construction building; for modern office
281 buildings this factor of value runs from $4 to $8 per square foot of floor surface. Consequently, the deputy has, besides the well-known means of determining the values of land, the factors of building values, ranging from $1 for nominal values to $8 per square foot of floor surface. A builder would determine the cost of a building by a careful examination of the amount of material used in construction, with the aid of plans and specifications, the cost of labor and a consideration of the difficulties to be overcome. An assessor cannot enter into such calculation, because he has not the plans and the specifications, nor has he the time. The cost may also be otherwise determined by an architect, who knows the height of the building in feet, by estimating its cubic contents, and using such a factor per cubit foot as his judgment tells him such a building will cost. The deputy cannot avail himself of this plan, because he cannot ascertain promptly the height of a building in feet. He can, however, easily count the stories, his map gives him the square feet of land, which he multiplies by the stories, and this product by his factor for square foot of floor surface, thus arriving at the value. His selection of the proper factor is guided by an exterior and interior examination of the building, to ascertain materials used and style and kind of trim and finish.

"Let us see how these rules work out on the block fronting on the west side of Broadway, between Dey and Fulton streets. This block contains the 'Mail and Express' and 'Western Union' buildings, the former of which was increased from $500,000 to $650,000, while the latter was not increased at all. A sketch is submitted which is a copy of the tax map. For the purposes of comparison let us suppose that an inside lot on Broadway, at this point, is worth $80 per square foot. The corners are worth 50 per cent. additional or $120, and the southwest corner, which faces an open place, is probably worth more, say $130, while property down the block, on either Fulton or Dey streets, connected with Broadway, may be worth $50 per

square foot. With these prices in view, let us figure out some
282 of the values on this frontage. If the above prices are not the real value in every one's judgment it will not matter in the process of equalization between the 'Mail and Express' and the 'Western Union' buildings, because they are alike affected:

17 x 96.10; 1,662 sq. ft. x $130	$216,000
Building is 6 stories, and old	25,000
Total value	$241,000
Assessed value raised from $160,000 to	180,750
Value as recorded in sale made in 1888	$226,250

No. 203 Broadway—Mail and Express building.

2,475 sq. ft. on Broadway x $80	$198,000
4,422 sq. ft. on Fulton street x $50	221,100
6,897 sq. ft., land value	$419,100
10 stories, 68,970 sq. ft. floor surface x $7	482,790
Total value	$901,890
Assessed value raised from $500,000 to	550,000

No. 195 Broadway—Western Union building.

2,500 sq. ft. northwest corner Dey street x $120	$300,000
5,033 sq. ft. on Broadway x $80	402,640
8,100 sq. ft. on Dey street x $50	405,000
15,633 sq. ft., land value *	$1,107,640
11 stories: 171,693 sq. ft. floor surface x $5.50	945,590
Total value	$2,053,430
Assessed value same as in 1898	1,500,000

283 Now, let us consider the block on the easterly side of Broadway, containing the "St. Paul," the "Park Bank" and the "Knox" buildings, of which a copy of the tax map is also given. The deputy considered this side of Broadway much more valuable per square foot, fixing the Fulton Street corner at $175, the inside at $120, the Ann Street corner at $200 per square foot and the rear property, connected as it is with Broadway parcels, at $50 per square foot.

* The land was purchased in separate parcels in 1872, 1880, 1880 and 1890, as per "Record and Guide," for a total of $1,807,000.

(*Diagram.*)

St. Paul building.

2,500 sq. ft. southeast corner Ann street x $200	$500,000
3,200 sq. ft. Broadway x $120	384,000
5,700 sq. ft., land value	$884,000
5,700 sq. ft. x 18 stories = 102,600 sq. ft.; 1,560 sq. ft. x 7 stories = 10,920 sq. ft.; total surface of 113,520 sq. ft. x $8 =	908,160
Total value	$1,792,160
Assessed value, 1898, $1,000,000; raised to $1,500,000; reduced to	1,300,000

† Northeast corner Broadway and Fulton—Knox building.

2,208 sq. ft. x $175	$386,400
Building, old	20,000
Total value	$406,000
Assessed in 1898 at $175,000; raised in 1899 to	275,000

284 Broadway—Park bank.

5,933 sq. ft. on Broadway x $120	$711,960
2,360 sq. ft. rear on Ann street x $50	118,000
8,293 sq. ft. land value	$829,960
Building: 5 stories; 41,465 sq. ft. floor surface x $4	165,860
Total value	$995,820
Assessed value, not raised in 1899	750,000

The block on the westerly side of Broadway, between Barclay street and Park place, is another typical case. The corners may be considered worth $120 per sq. ft., the inside $75 per sq. ft. The buildings are quite unimportant in value, varying, perhaps, from $1 to $2 per sq. ft. of floor surface. The map given herewith like the two given above is copied from the tax map.

† This property has a record of sale in 1893 to E. M. Knox (a part interest only) for $392,000. The deputy probably dropped below the mathematical figure, because the property is hemmed in by the Park Bank holdings and is not large enough for the erection of a modern high building.

(*Diagram.*)

(Page 637)—No. 229 Broadway.

2,500 sq. ft. on northwest corner of Barclay x $120.....	$300,000
2,100 sq. ft. on Broadway x $75.....	157,000
2,600 sq. ft. on Barclay x $50.....	130,000
7,200 sq. ft. land value.....	$580,000
Building, 6 stories; 43,200 sq. ft. floor surface x $125, say..	50,000
Total value.....	$637,000
Assessed value 1898, $425,000; raised 1899 to.....	478,000

285 No. 231 Broadway.

3,000 sq. ft. x $75.....	$225,000
Building, 6 stories; old.....	20,000
Total value.....	$245,000
Assessed value 1898, $130,000; raised 1899 to.....	180,000

No. 223 Broadway.

2,250 sq. ft. x $75.....	$168,750
Building, 5 stories; old.....	10,000
Total value.....	$178,750
Assessed value 1898, $80,000; raised 1899 to.....	125,000

No. 234 and 235 Broadway.

4,200 sq. ft. x $75.....	$315,000
Building, 7 stories.....	50,000
Total value.....	$365,000
Assessed value 1898, $202,000; raised in 1899 to.....	275,000

No. 237 Broadway, southwest corner Park place.

3,150 sq. ft. x $120.....	$378,000
Building, 7 stories x $2.....	44,000
Total value.....	$422,000
Assessed value not raised in 1899	325,000

Mr. PAGE: That is all we wanted to ask Mr. Bell.

Mr. COMAN: We now renew our motion to strike out all of the evidence relating to the examination of Mr. Feitner before the Mazet committee.

The REFEREE: I strike out the evidence given by Mr. Feitner before the legislative committee.

286 Mr. COMAN: Also the witness' answer that he afterward heard Mr. Feitner had given such testimony?

The REFEREE: Yes.

Plaintiffs except.

Re-direct examination.

By Mr. COMAN:

Q. Is there any explanation that you desire to make concerning the figures and tables contained in this statement from the "Record and Guide;" if so, you may proceed to make it?

Objected to as too broad.

Q. What is the fact as to the figures in this statement purporting to give the true value of the various pieces of property referred to; from what were those derived and what do they represent actually?

Mr. HILL: What figures are you referring to?

Mr. COMAN: The figures which purport to give the true value of the pieces of real estate referred to in this article.

A. The first tables are tables of comparison, not necessarily of value, although they are based on values.

Q. You refer now to those at the foot of page 636?

A. Yes; this was a comparison.

Mr. HILL: Don't it show for itself what it is?

A. Yes, sir.

Mr. HILL: Then what is the object of any explanation?

Q. Proceed, unless the referee tells you not to?

The REFEREE: It is not necessary for him to testify to anything that appears there.

Mr. COMAN: He isn't doing any such thing.

287 The REFEREE: If those figures are not true, that is what we want to get at, say so.

The WITNESS: I say, these figures of valuations are not mine.

Q. Whose are they; from what source did you procure them?

A. From recorded sales; I give no estimate of value; I only give a comparison of value in the statement here.

By the REFEREE:

Q. Those are the figures obtained from the recorded sales the same as the figures you have produced here to-day?

A. Yes; except those are verified and these are not.

Q. We assume they are a correct transcript from the recorded

sales; the figures you produce here to-day are correct transcripts from the recorded sales?

A. Yes, sir.

The REFEREE: You have the same standard, then, in both cases. Now, is there anything the matter with those figures that you want to explain. Put any question you desire.

Mr. COMAN: I will adopt your honor's question.

The WITNESS: I see nothing I want to explain about that.

Mr. COMAN: Simply the figures do not represent your estimate of values, but the recorded sales, the same as the statement that you have produced to-day.

The REFEREE: That is true; the same standard in both cases.

Mr. COMAN: In the statement submitted to-day are you familiar with the values of the property referred to in this statement as distinguished from the sales price?

288 The REFEREE: In order to make the answer of any value, did you examine into the various parcels of real estate to see what the real value was aside from the sales price?

A. To some extent.

Mr. COMAN: As to what particular pieces of property and what examination did you make; what investigation did you make—I don't think I will go into that now; I withdraw that question.

The WITNESS: In the paragraph preceding the figures given on page 637 is a reference to value, supposing a value per square foot; it is not given as an actual value; those figures recur in the statement below.

By Mr. PAGE:

Q. Those are the values, are they not, which are in that part of the article which has been offered in evidence by the attorney-general?

A. I don't know whether I understand which has been.

Q. The figures offered in evidence on behalf of the plaintiffs occur at the end of your article; is your present comment designed to refer to that part?

A. My attention was drawn to the figures on the preceding page to that.

Q. Which were offered in evidence by the attorney-general?

A. Yes, sir.

Mr. COMAN: You started to say something about the last figures.

Mr. BROWN: He don't want to explain what he put in himself.

The WITNESS: The figures in the paragraph, the prices per square foot for land given in the last paragraph on page 636 are not intended as real values, they are only given as figures for the

289 purpose of comparison, illustration; the article says, "For the purposes of comparison, let us suppose that an inside lot at this point is worth $80 per square foot;" I wanted to say that is not necessarily my judgment of the value of the land there, just as the article intimates.

By Mr. BROWN:

Q. It might be worth more?
A. Yes, or less.

By Mr. PAGE:

Q. The part of the article offered in evidence by the plaintiffs appears on page 637, does it not?
A. Yes.
Q. You make no assessment personally, do you; they are all made subject to the approval of the board?
A. No, I make no assessments personally.

By Mr. COMAN:

Q. Nobody makes any assessment personally; the assessments are made by the board as a board?
A. No, sir; the deputies make the assessment.
Q. The deputies fix the valuations?
A. Yes, sir.
Q. The assessment is the action of the board, is it not?
A. The assessed values are placed by the deputies, the actual tax is fixed by the board of aldermen and municipal assembly.

By Mr. BROWN:

Q. The deputies actually swear to the assessments?
A. Yes, sir.

By Mr. PAGE:

Q. The deputies personally view the property, do they not?
A. Yes, sir.

290 By Mr. BROWN:

Q. A statute requires them to make an oath that they have assessed it?
A. Yes, sir.

Defendants rest.

FREDERICK G. HOBBS, recalled by plaintiffs in all the cases:

Examined by Mr. PAGE:

Q. You have read Mr. Bell's direct examination in this proceeding, have you not?
A. Yes, sir.
Q. You have, during the last two weeks, made a study of the statements which are contained in a document which has been referred to by Mr. Bell in his testimony as the list being the statements which were prepared by Mr. Bell prior to coming on the stand as a statement of his views on this branch of the case?
A. Yes, sir.

Q. Have you, as a result of your investigation and the result of personal examination of transfers of property, prepared a statement containing statistics and stating various circumstances which controvert to a certain extent the statements made on Mr. Bell's direct examination?

A. I have.

Q. Will you please read the statements?

The witness reads the statement as follows:

"The seventy-three transfers of property cited by me in my testimony, which Mr. Bell criticised, were actual sales, requiring more or less negotiation to make the minds of the buyer and seller agree, and that the prices or values quoted were the real values at that time. These seventy-three illustrations were not selected as a special list.

"I find in Mr. Bell's testimony a total of forty-five illustrations of transfers of property; twenty-seven of these forty-five were
291 sales at auction, twenty-one of the twenty-seven auction sales were sold under foreclosure, fifteen of the twenty-one sales bid in by the plaintiff; of the twenty-seven auction sales, four were executors' sales, and two of the properties, viz., 153 and 155 Spring street, and 1680–1684 Broadway, were brought in by heirs of the estate, evidencing that the outside bidders were not willing to pay the value of the property and still Mr. Bell uses these figures as a basis in arriving at percentages on these two properties of 92 per cent. and 93 per cent. And two illustrations have street numbers which do not exist, viz., 234 West Eighty-eighth and 180 and 182 West One hundred and twenty-fifth. The assessed value of four of the properties sold at auction was reduced in 1900 by the tax commissioners, *i. e.*, 49–55 West Twenty-seventh street, was reduced from $365,000 to $325,000, or 80.125 per cent. of the price, $400,000, which it was sold for at public auction under foreclosure. On December 26, 1900, this same property was sold at private contract by the buyer at auction to Frank N. Gill. The revenue stamps on deed were $700—indicating that the property was sold for a consideration of $700,000—assuming this as a basis of value, the percentage of assessed value to real value is 46.43 per cent. On September 18, 1900, he gave a mortgage on the property to the City Real Estate Company of $400,000 at 4½ per cent., the subsequent sale and mortgage to the sale of foreclosure indicate clearly that the price bid at auction was not a fair value for the property.

The assessed value of 238 East Forty-fifth street, was reduced in 1900 from $10,000 to $9,000, or 100 per cent. of the price which it sold for at public auction under foreclosure. March 2, 1897, a mortgage was made on it for $11,000 at 5 per cent. March 6, 1897, it was sold subject to mortgage of $11,000 for an expressed consideration of $18,250, which makes the assessed value of 1900 50 per cent. of the selling price. August 14, 1897, it was sold, and expressed consideration was $18,000, which also makes assessed value of
292 1900 50 per cent. of the selling price. March 4, 1898, a mort-

gage was made for $12,500 at 5 per cent. June 18, 1898, was sold subject to a mortgage of $12,500, and the expressed consideration was $17,500, which also makes the assessed value of 1900 about 50 per cent. of the selling price. February 4, 1899, was sold at foreclosure, amount due being $14,409.40, and was bid in by the plaintiff for $9,000—which, in view of the previous history of the property, would not indicate that it sold for anything like its real value, and therefore that the percentage of assessed value to price in record of transfer of February 4, 1899, is not a fair conclusion.

I find an error in Mr. Bell's testimony as to the assessed value of No. 230 West One hundred and thirty-first street. He represents it as $10,000, and I find it to be $5,500, which is 55 per cent. of the price which it sold for September 27, 1899.

No. 22 Chatham square, referred to by Mr Bell as being assessed in 1899 for $11,000, and selling April 13, 1899, for $12,500, or 88 per cent. I will add further; it sold August 30, 1899, the revenue stamps on deed were $18, indicating consideration as $18,000 or 61.11 per cent. August 30, 1899, premises were mortgaged for $12,000, at 4½ per cent., five years.

No. 67 Wall street, referred to by Mr. Bell, assessed at $210,000 in 1899, and sold for $180,000 September 25, 1899.

Nos. 386 and 388 West Broadway, referred to by Mr. Bell, assessed at $50,000 in 1899, and sold for $48,500 May 12, 1899.

No. 320 Riverside drive, referred to by Mr. Bell as assessed in 1899 for $75,000, and sold May 10, 1899, for $77,500. I find the sale of May 10, 1899, and the consideration in the deed was
293 $77,500; the amount expressed in the deed of May 10, 1899, is only about the value of the land, and in addition thereto is a very handsome dwelling on the land.

No. 5 West Twenty-second street, referred to by Mr. Bell, assessed at $80,000; record of transfer June 2, 1889; consideration, $90,000. I find on June 2, 1899, a deed of March 23, 1883, was re-recorded, and the consideration in deed of June 2, 1899, must have been the same as the deed of March 23, 1883, or the value of that date. A conservative estimate of the value of No. 5 West Twenty-second street (being 54 feet by 98.9) would be $160,000, which would make the assessed value of $80,000 of 1899 50 per cent. of the actual value. To substantiate my value on No. 5 West Twenty-second street, I quote the sale of No. 13 West Twenty-second street, dated December 28, 1899, 27 x 98.9, 4-story stone front dwelling, $82,500, and No. 15 West Twenty-second street, dated June 19, 1900, 26.2 x 98.9, 4-story stone front dwelling, price, $110,000. These figures are equivalent to about $3,000 per front foot, which is the rate of valuation given to No. 5 West Twenty-second street, at $160,000.

Northeast corner of Riverside drive and Eighty-fourth street, referred to by Mr. Bell, assessed $64,000, 1899, sold for $60,500, March 8, 1899. I find the following to be the case: The northeast corner of Eighty-fourth street and Riverside drive (57.4 x 102 x 52.2 x 79) was sold March 8, 1899, by Patrick Callaghan to William R. and

James R. Stewart, for $60,500. This plot is assessed for $28,000, and not $64,000, as represented by Mr. Bell. By way of explanation, however, would say that the entire property, comprising a little over five lots, was assessed for $64,000; therefore the relation of the correct assessment of $28,000 to the selling price of $60,500 is 46½ per cent., and not 105 per cent., as represented by Mr. Bell.

Mr. Bell refers to the northwest corner of Central park, west,
294 and Ninety-first street, assessed value, $140,000, 1889, sold May 17, 1899, for $150,000. I find the northwest corner of Ninety-first street and Central park, west (100.8 x 120) was sold by Julius Oppenheimer to Isabelle Loring on May 17, 1899, for $150,000. I also find by an examination of the books in the tax department that the entire block front on Central park, west, from Ninety-first street to ninety-second street, being practically twice the size of the plot referred to by Mr. Bell, was assessed, in 1899, for $140,000; therefore by dividing the assessment and putting one-half of it on each one-half of the block, it would reduce the assessed value to $70,000 which is 46⅔ per cent. of the selling price of the northwest corner of Central park, west, and Ninety-first street, May 17, 1899.

No. 19 East Fifty-sixth street referred to by Mr. Bell as assessed $46,000 in 1899; conveyed October 2, 1899; consideration, $50,000. I find this property conveyed to Jesse E. Carpenter, May 9, 1896, consideration, $65,000, which makes the assessed value of 1899 about 71 per cent. of the consideration expressed in deed of May 9, 1896, The transfer of October 2, 1899, was from Jesse F. Carpenter to Elizabeth Ten Eyck Carpenter. This property is now worth about $100,000. On this basis the assessed value of 1899 is about 46 per cent. of the present value.

No. 14 East Tenth street, referred to by Mr. Bell as assessed 1899 for $18,000, record of conveyances February 27, 1899, $19,240. This conveyance was made by Howard H. Henry *et al.*, executors, etc., of Frank L. Henry to Julia H. and Ambrose D. Henry, $19,240. On December 27, 1899, the owners of record of that date gave a mortgage on this property to the Equitable Life Assurance Society of $20,000 at 4½ per cent. On April 12, 1899, No. 22 East Tenth street, a three-story house (on same size plot as No. 14 East Tenth street, 25 by 92.3) was conveyed and the consideration expressed was $30,000,

therefore, on a basis of the mortgage placed on the property
295 by the Equitable Life and the conveyance of No. 22 East Tenth street April 12, 1899, it is my opinion that the value of No. 14 East Tenth street, at the time of transfer, was $30,000, which would make the assessed value as 60 per cent. of the real value.

No. 232 West Fifteenth street, referred to by Mr. Bell as assessed 1899, $7,000, record of transfer April 17, 1889, $8,000. I find this property conveyed by Daniel H. Smith to Pierson W. Smith February 2, 1901. No. 224 West Fifteenth street, a similar house, was conveyed at an expressed consideration of $15,000 February 9, 1901. No. 214 West Fifteenth street, a similar house, was offered for sale at auction and bid in by the parties in interest at $15,450. It is my

opinion that the real value of No. 232 West Fifteenth street in 1899 was $14,000, which makes the assessed value 50 per cent. of the value of the property.

North side One hundred and sixty-seventh street, 77.3 west of Audubon avenue (and not west of Amsterdam avenue, as there is no such conveyance) assessed 1899 for $5,500, record of transfer February 2, 1899, $60,000. I find the above a record of conveyance and further find a mortgage of $5,000 at 5 per cent. recorded, given by the buyer at foreclosure February 2, 1899, to Frederick P. Sands, trustee, under deed of trust by Frederick Parker Sands. I am familiar with the property and believe the lot to be worth $4,000, and the house on the lot to be worth $5,000, aggregating a total value of $9,500, which is 60 per cent. assessed value to the real value. My valuation is substantiated by the amount of loan B. & M. made to Sands subsequent to the sale at foreclosure.

No. 119 Baxter street, 25 by 100, a 6-story brick store and tenement with 5-story brick tenement in rear, referred to by Mr. Bell, assessed 1899, $16,000; consideration expressed in deed July 8, 1899, $17,100. I also find a mortgage given on said property by the purchaser of July 5, 1899, of $15,000 at 3½ per cent., for
296 five years. It is, therefore, conclusive that the expressed consideration of $17,100 was for the equity above mortgage of $15,000, making a total value of the premises, $32,100, or 50 per cent. assessed value to the real value. To further substantiate this valuation I quote sale of December 22, 1899, No. 93 Baxter street, 25 by 100, 2-story frame store and tenement, 3-story brick tenement in the rear, at an indicated price of $22,500, revenue stamps, $22.50.

Nos. 277 and 279 West One hundred and twenty-seventh street, referred to by Mr. Bell, assessed value, 1899, $30,000, record of transfer, December 6, 1899, $30,000. I find that the record referred to by Mr. Bell was not a deed, but the record of a contract of sale which was released of record January 8, 1900, and that the property was conveyed December 9, 1899, at an indicated consideration of $40,000, or 75 per cent. of the assessed value to real value, and was again conveyed June 25, 1900, at an indicated consideration of $45,500, or 66⅔ per cent. assessed value as to real value.

One hundred and fortieth street, south side, 100 feet east of Amsterdam avenue, referred to by Mr. Bell, assessed, 1899, $—; record of transfer, March 9, 1899, $5,000, May 24, 1899. This lot was mortgaged by the owner to American Manufacturing Company for $5,000, June 2, 1899; was further mortgaged for $1,000; June 15, 1899, lot was sold to Walter D. Starr, subject to mortgages, for $6,000. This lot, in my opinion, was reasonably worth $7,500 in 1899, which makes the assessed value 60 per cent. of the real value.

No. 800 Lexington avenue, referred to by Mr. Bell, assessed, 1899, for $14,000; record of transfer, May 16, 1899, $15,000. I find record of transfer of the property, April 27, 1898, consideration expressed, $30,000, or 49 per cent. assessed value, 1899, to real value, 1898;

April 27, 1898, mortgage was placed on this property of $16,000, at 5 per cent., to Joseph Louchheim; May 16, 1899, under
297 foreclosure, premises sold to plaintiff, said Louchheim, for $15,000, and there was then due on the B. & M. $17,356.55; May 16, 1899, property conveyed subject to mortgage of $16,000, at 4½ per cent. for five years, made to said Louchheim. It is my opinion that the foreclosure sale of May 16, 1899, quoted by Mr. Bell, was not the real value, as is evidenced by the mortgage made on said premises of $16,000, at 4½ per cent., and the immediate resale.

No. 446 East Seventy-second street, referred to by Mr. Bell, assessed, 1899, $4,500; record of transfer, January 9, 1899, $4,600. I find May 29, 1899, said property was bought from the purchaser at foreclosure sale of January 9, 1899, at an expressed consideration of $2,500 above a mortgage of $3,500, or an indicated valuation of $6,000, which is 75 per cent. assessed value as to real value, and on January 12, 1900, owner of record placed a new mortgage on said premises of $5,000, at five per cent.

No. 32 West Sixty-sixth street, size 25 x 100.5, with 5-story brick flat, referred to by Mr. Bell, assessed, 1899, for $10,000; record of transfer foreclosure March 8, 1899, $10,000, to the plaintiff. In my opinion the lot without any improvement in 1899 was worth $15,000, or 66⅔ per cent. of assessed value to real value.

No. 285 West One hundred and forty-seventh street, referred to by Mr. Bell, assessed $12,000; record of transfer October 12, 1899, $13,500. I find that the buyer of the premises at foreclo ure sale gave a mortgage October 12, 1899, to United States Trust Company of $11,000, at 4½ per cent., in my opinion the loan of $11,000 as 60 per cent of the real value of the property.

Nos. 516 to 522 West Thirty-fifth street, referred to by Mr. Bell, assessed in 1899 $38,000; recorded transfer, May 1, 1899, $41,000. I find a record of transfer December 20, 1898, consideration expressed, $50,910, which is 76 per cent. assessed value, 1899, to ex-
pressed consideration, December 20, 1898; also record of
298 transfer, January, 1900, consideration expressed $47,842, which is about 80 per cent. assessed value, 1899, as to expressed consideration, January 9, 1900.

I hereby summarize, as far as examined, the transfers submitted by Mr. Bell, with percentage arrived at by him, showing him to be in error, as follows:

Property.	Bell's per cent.	Correct per cent.
5. 49–55 W. 27th	91 per cent.	46.43 per cent.
6. 228 E. 45th	111 "	50 "
7. 367 W. 56th	100 "	89 "
8. 2109 2d Av	87 "	81 "
9. 230 W. 131	100 "	55 "
10. 23 Chatham Sq	88 "	61.11 "
11. 66 Wall St	116 "	77 "
12. 386 and 388 W. B'way	103 "	83.33 "
13. 320 Riverside	97 "	51 "
14. 5 W. 22d	89 "	50 "
15. Riv. and 84th	105 "	46⅔ "
16. C. P. W. and 91st	93 "	46⅔ "
17. 19 E. 56th	92 "	46 "
18. 14 E. 10th	93 "	60 "
19. 232 W. 15th	87 "	50 "
20. N. S. 167th St	91 "	60 "
21. 119 Baxter	93 "	50 "
22. 277 and 279 W. 127th	100 "	66⅔ "
23. 140th St., near Ams.	80 "	60 "
24. 800 Lexington Av	90 "	49 "
25. 446 E. 72d	98 "	75 "
26. 32 W. 66th	100 "	66⅔ "
27. 285 W. 147th	88 "	60 "
28. 516 to 522 W. 35th	92 "	76 "

1. 153 and 155 Spring, exr. sale bid in by heir.
2. 1680, 1684 B'way, " " "
4. 180–182 W. 125th, no such number.
3. 234 W. 88th, " "
No card, 210 B'way. No such conveyance.

Referring to the corner of Second avenue and Seventy-second street, referred to in my former testimony, having been sold for $19,000 and being assessed for $14,000, assessed value to actual value, 28.571 per cent. To correct that, the size of the property, 50 by 102.2 is 59 by 102.2, making a difference of 9 feet in the assessed value; therefore if 50 feet was assessed at $14,000, 59 feet should be assessed $16,520, which would increase the percentage of assessed value to 33.71 per cent., and not 28.571 per cent., as quoted before.

299 *Hearing, December 6, 1901.*

THOMAS C. SMITH, sworn for the plaintiffs in all cases:

Examined by Mr. PAGE:

Q. Where do you reside?

A. No. 57 East Seventy-sixth street, borough of Manhattan; my place of business is No. 111 Broadway.

Q. Will you state your experience in the real estate business and qualifications to testify as an expert as to the value of real estate in the city of New York?

A. I wish to state my business; I am a real estate broker, appraiser

and auctioneer; have been engaged in that business for nearly sixteen years; my place of business has always been No. 111 Broadway; I have appraised and testified for the city in many condemnation proceedings; that is, to acquire land and buildings under the condemnation proceedings for park, street openings, school sites; I have also appraised for individuals, estates, lawyers; I have bought and sold property on Manhattan island from Stone street to Two hundred and ninth street, and have also appraised all over the borough of Manhattan; I have a system of block books showing the date of the last conveyance, the consideration as mentioned in the deed and the name of the grantee of every parcel of land on Manhattan island that has been conveyed subsequent to March 22, 1868; I also have a card system.

The REFEREE: I guess we will assume you are qualified.

By Mr. HILL:

Q. No. 111 Broadway is the headquarters of the Real Estate exchange?

A. Yes, sir; the real estate sales-room.

Q. All take place there?

A. Yes, sir.

By Mr. PAGE:

Q. Have you prepared a schedule of parcels of property
300 which have been recently the subject of sales in the various eight sections into which the island of Manhattan is divided?

A. I have.

Q. The dates when these transfers of property took place were a short time before, or a short time after the second Monday of January, 1900, were they not?

A. Yes, sir.

Q. In these eight schedules which you have prepared appear columns headed "Assessed valuation," "Date," "Record of transfer," and the percentage which the assessed valuation constitutes of the consideration which has been found by you to be expressed in the record of transfer?

A. Yes, sir.

Q. Will you state in what way you prepared these statistics which are contained in these tabulated statements referring severally to the eight sections?

A. I have a card system arranged according to the section and block numbers of Manhattan island, and I have in the limited time run through these cards, looked them over and jotted down the conveyances, the date and the consideration mentioned in the deed; afterwards I have gone to the tax office and obtained the tax valuation of 1900 and then figured out the percentage that the tax valuation bears to the selling price; then I have added up the totals and have shown the average percentage that the tax valuation bears to the selling price.

Q. The assessed valuation?

A. Assessed valuation; we always speak of it as the tax valuation bears to the selling price in sections 1, 2 and 4; the others I did not have sufficient time to look over the tax books and get the tax valuation.

Q. In preparing these tabulations, have you considered at all the assessed valuation before making up your list?

A. Oh, no; I didn't know about the assessed valuation until afterward.

Q. That is to say, you have made up your list of specific parcels of property without any reference whatsoever to the assessed valuation of the same?

301 A. Absolutely irrespective of the assessed valuation in the first instance.

By Mr. BROWN:

Q. Then you have gone to the tax books and found the assessed valuations of the property you had selected in that way?

A. I have.

By Mr. PAGE:

Q. I show you the schedules to which you have referred and ask if these are the papers which have been prepared by you on the basis stated, and whether the statements contained in the same are correct?

A. Yes, sir; those are the papers and the statements are correct.

By Mr. FIERO:

Q. You say you compared the assessment of 1900; what assessment do you mean, the assessment became fixed at what time?

A. The tax valuation of the year 1900, or the assessed valuation of 1900, decided upon in January, 1900.

By Mr. PLATT:

Q. Assessed as of the second Monday of January, 1900?

A. Yes, sir.

Mr. PAGE: We offer in evidence eight tabulated statements prepared by Mr. Smith showing with respect to the eight sections into which the island of Manhattan is divided a comparison between assessed value and selling value in the cases stated.

Defendant's counsel objected as immaterial, incompetent and not properly proven, and objected specifically to the sales and comparisons appearing where the transfer was later than the second Monday of January, 1900, that being the date of the assessment. And upon the ground that a very large proportion appears to be of a

302 later date so far as the record of transfer is concerned.

Objection overruled; exception.

Q. Will you state whether, in your opinion, the sales which are referred to in these various tabulations are fair standards of the rela-

tion between actual and selling value in the various sections of the city?

A. I consider that they are typical examples; yes, sir.

Cross-examination.

By Mr. COMAN:

Q. In preparing this schedule, did you take all of the sales in the various districts between certain dates?

A. No; not all of the sales.

Q. Why not?

A. Because I didn't have the time.

Q. In making your selections what course did you pursue?

A. In making my selections I pursued this course, to take something on Broadway, for instance, in section one, the Trin-ty building, No. 111 Broadway, Liberty street, Front street, Hester street Cherry street, Greenwich street, so as to show that the same proportion or ratio would exist in different districts and different streets.

Q. You took what you regarded as representative transactions?

A. Yes, sir.

Re-direct examination.

By Mr. BROWN:

Q. When you took those properties that you have mentioned you had no knowledge what the assessment was?

A. None whatever.

By Mr. PAGE:

Q. In any case?

A. No, sir.

303 The following is a copy of the tabulated statements:

Section 1.

	Assessed value.	Record of transfer.		Per-centage.
37 Front St	$6,000	July 12, 1900	$12,700	47
28½ and 30 Front St	18,000	Jan. 30, 1899	26,000	69
114 and 116 Liberty St. and 119 and 121 Cedar St	72,000	Feb. 15, 1900	275,000	26
109 and 111 Broad St. and 24 Front St	18,000	Jan. 19, 1900	80,000	22
10 Broadway	140,000	Aug. 1, 1900	250,000	56
111 Broadway	850,000	May 26, 1899	475,000	59
		(1–3)	1,425,000	Whole
139 Broadway	150,000	May 31, 1900	333,000	45
155 and 157 Broadway	300,000	May 1, 1900	500,000	60
255 Pearl St	24,000	Oct. 28, 1899	60,000	40
191 William St	18,000	May 29, 1900	32,000	56
215 and 219 William St. and 12 to 16 North William St	28,500	Mar. 27, 1900	37,500	76
23 Park place and 20 Murray St	130,000	July 24, 1899	170,000	77
89 and 91 Warren St	21,000	Ap'l 2, 1900	35,000	60
156 Reade St	12,500	Jan. 4, 1900	18,000	69
147 W. Broadway	25,000	Nov. 17, 1899	36,000	70
487 Pearl St. and 38 City Hall place	15,000	Dec. 26, 1900	21,000	71
5 and 7 Franklin St	22,500	May 10, 1900	46,500	48
353 to 357 Broadway	390,000	Mar. 1, 1900	413,000	94
339 Greenwich St	18,000	July 18, 1899	27,000	67
46 Harrison St	11,500	Ap'l 19, 1900	15,000	77
68 James St	12,000	Mar. 1, 1899	23,250	52
130 Madison St	12,000	Feb. 1, 1899	23,000	52
25 East Broadway	7,000	May 14, 1900	19,175	36
6 Rutgers St	16,000	Feb. 1, 1899	32,500	49
162 East Broadway	11,000	Jan. 16, 1900	25,000	44
59 and 61 Elizabeth St	14,500	Jan. 18, 1900	23,000	63
137 Hudson St	12,000	Dec. 11, 1899	16,500	73
446 Washington St	4,500	Oct. 21, 1899	11,000	41
439 Canal St	6,000	Nov. 29, 1899	13,500	45
161 Hester St	14,500	Nov. 13, 1899	30,000	48
156 Cherry St	7,000	Mar. 28, 1900	10,450	67
				1759

Average, 56 13–31 per cent.

304 *Section* 2.

	Assessed value.	Record of transfer.		Per-centage.
36 Goerck St	$7,000	Aug. 29, 1899	$13,500	51
65 Broome St	20,500	Ap'l 19, 1900	33,500	60
131 Cannon St	9,000	Mar. 1, 1900	15,600	58
474 Grand St	10,000	Nov. 13, 1899	22,600	44
24 Ave. D	7,000	Sept. 26, 1899	12,500	56
284 Third St	15,000	June 13, 1900	26,650	56
386 Eighth St	6,000	Jan. 6, 1900	15,000	40
Avenue C, N. E. cor. 7th St	19,000	Aug. 3, 1899	25,000	76
254 Fourth St	7,000	Sept. 25, 1900	17,600	40
619 East 9th St	7,500	Mar. 1, 1900	17,500	43
242 Houston St	25,000	Feb. 15, 1900	48,000	52
186 Second St	15,500	Feb. 15, 1900	27,500	56
207 East 10th St	13,500	Apr. 26, 1900	21,500	63
543 East 11th St	6,500	Dec. 29, 1899	16,250	40
141 Bowery	19,000	Oct. 31, 1899	35,100	54
163 Bowery and 133 Chrystie St	28,000	Oct. 25, 1899	66,850	42
68 St. Mark's place	14,500	Mar. 29, 1900	24,050	60
200 Mott St	10,500	Nov. 21, 1899	18,750	56
516 and 518 Broome St	16,500	Nov. 23, 1899	25,000	66
193 Spring St	7,000	Jan. 3, 1900	12,500	56
14 and 14½ Charlton St	11,000	June 5, 1899	23,500	47
604 to 608 Broadway	225,000	Mar. 12, 1900	319,500	70
146 to 154 Thompson St. and 474 to 478 West Broadway	98,000	Nov. 17, 1899	147,500	66
34 and 36 Houston St	28,000	Mar. 1, 1900	35,500	79
190 Bleecker St	11,500	Mar. 1, 1900	18,000	64
215 Thompson St	9,500	Jan. 3, 1900	17,000	56
108 Macdougal St	18,500	Jan. —, 1900	29,500	63
110 and 112 Sixth Ave	39,500	Ap'l 23, 1900	55,000	72
31 and 31½ West 12th St	15,000	Feb. 27, 1900	25,000	60
118 West 13th St	12,000	Sept. 9, 1899	18,000	67
158 to 160 West 14th St. and 53 Seventh Ave	24,000	Ap'l 26, 1900	65,000	37
241 West 4th St	8,000	Nov. 16, 1899	11,500	70
				1820

Average, 56⅞ per cent.

305 *Section* 3.

	Assessed value.	Record of transfer.		Per-centage.
527 and 529 West 32d St	$12,500	Feb. 1, 1900	$20,000	62
123 Ninth Ave	12,000	Feb. 27, 1900	27,300	44
449 West 33d St	4,500	Nov. 15, 1899	12,000	37
427 West 37th St	5,000	Apr. 26, 1900	12,000	42
320 West 17th St	22,000	Dec. 27, 1899	43,000	51
330 West 18th St	16,500	Dec. 27, 1899	38,000	44
352 West 26th St	9,000	Jan. 11, 1900	18,000	50
347 West 35th St	7,000	Mar. 1, 1900	14,650	48
209 West 26th St	7,000	May 1, 1900	16,000	4
112 West 25th St	14,000	Jan. 19, 1900	23,000	61
118 West 29th St	8,000	Nov. 1, 1899	15,100	53
53 West 16th St	19,000	Mar. 29, 1899	35,000	54
15 West 22d St	37,000	June 19, 1900	110,000	34
Fifth Avenue hotel	3,000,000	May 28, 1900	4,225,000	71
Broadway, S. W. cor. 26th St	1,575,000	Feb. 28, 1899	2,725,000	58
29 West 32d St	40,000	Jan. 6, 1900	68,500	58
31 West 32d St	40,000	Nov. 29, 1899	75,500	52
35 West 32d St	40,000	Nov. 29, 1899	75,000	53
30 West 33d St	32,000	Nov. 29, 1899	51,000	63
32 West 33d St	30,000	Nov. 27, 1899	60,000	50
34 West 33d St	30,000	Nov. 29, 1899	55,000	55
36 West 33d St	30,000	Nov. 29, 1899	60,000	50
8 West 35th St	17,000	Feb. 14, 1900	29,000	59
66 West 36th St	17,500	Nov. 29, 1899	46,500	37
13 West 36th St	33,500	Jan. 16, 1900	55,000	61
The Gridiron, Broadway, 5th Ave. and 23d St	425,000	May 5, 1899	800,721	53
6 East 23d St. and 7 East 22d St	145,000	Feb. 16, 1900	350,000	41
23d St., N. W. cor. Fourth Ave	325,000	June 1, 1899	440,000	74
320 Fourth Ave	11,000	Feb. 1, 1900	30,000	37
104 East 23d St	36,500	Nov. 2, 1899	105,000	35
360 East 10th St	7,000	Jan. 22, 1900	18,000	39
405 East 20th St	4,500	Dec. 27, 1899	10,175	44
1456 to 1460 Broadway	125,000	July 12, 1900	211,000	59
117 and 119 West 46th St	48,000	Nov. 8, 1899	80,000	60
				1,733

Average, 51 per cent.

306 *Section* 4.

	Assessed value.	Record of transfer.		Per-centage.
126 West 49th St	$25,000	Dec. 23, 1899	$50,000	50
1758 and 1760 Broadway	43,000	May 9, 1899	70,000	61
210 West 50th St	35,000	Dec. 15, 1899	49,800	70
334 West 42d St	23,000	Nov. 3, 1899	38,000	61
351 West 56th St	13,000	Apr. 2, 1900	18,000	72
1825 to 1829 Broadway and 6 to 10 West 60th St	65,000	May 16, 1899	161,000	40
Central park, west, N. W. cor. 62d St.	21,000	Sept. 19, 1899	120,000	18
36 West 73d St	24,000	Nov. 21, 1900	45,000	53
20 West 76th St	40,000	Oct. 31, 1899	74,000	54
132 West 72d St	38,000	Nov. 28, 1899	60,000	63
157 West 76th St	18,000	Dec. 7, 1899	34,000	53
Broadway, S. E. cor. 72d St	65,000	Nov. 17, 1899	137,500	47
353 West End Ave	17,500	Mar. 2, 1900	36,000	49
49 West 88th St	20,000	Oct. 29, 1900	32,000	63
158 West 85th St	12,500	Feb. 7, 1900	32,000	39
152 Riverside drive	42,500	Jan. 12, 1900	81,500	52
				845

Average, 52 13-16 per cent.

Section 5.

	Assessed value.	Record of transfer.		Per-centage.
11 West 46th St	$32,000	Dec. 13, 1899	$58,000	55
564 to 568 Fifth Ave	175,000	Mar. 6, 1899	350,000	50
21 West 51st St	43,000	Oct. 27, 1899	85,000	51
23 West 55th St	35,000	Mar. 5, 1900	56,000	63
43 West 55th St	20,000	Nov. 9, 1899	28,800	69
22 East 41st St	12,500	Apr. 30, 1900	35,000	36
667 Fifth Ave	55,000	Mar. 27, 1900	72,500	76
691 Lexington Ave	27,000	Feb. 1, 1900	70,000	38
231 and 233 East 55th St	8,000	Nov. 16, 1899	14,000	57
402 East 58th St	7,000	Apr. 9, 1900	14,000	50
5 East 63d St	46,000	Mar. 30, 1900	105,000	44
15 East 65th St	56,000	Jan. 27, 1900	106,000	53
307 855 Fifth Ave	160,000	July 14, 1900	275,000	58
S. W. cor. Madison Ave. and 68th St	56,000	Sept. 18, 1899	150,000	37
15 East 73d St	26,000	Mar. 12, 1900	54,000	48

Section 5—Continued.

	Assessed value.	Record of transfer.		Per centage.
953 Madison Ave	26,000	Apr. 18, 1900	42,500	61
165 East 81st St	8,000	Nov. 9, 1899	17,000	47
407 East 72d St	10,000	Oct. 27, 1899	18,750	53
405 East 77th St	11,500	Jan. 27, 1900	22,000	52
23 East 79th St	32,000	Oct. 11, 1899	75,000	43
17 East 80th St	31,000	Oct. 24, 1899	52,000	60
5th Ave., S. E. cor. 84th St	58,000	Apr. 17, 1900	110,000	53
68 East 86th St	27,000	Dec. 7, 1899	47,500	57
953 to 955 Park Ave	40,000	Feb. 28, 1900	73,000	55
212 East 82d St	6,500	Nov. 29, 1899	29,000	22
1621 Second Ave	13,500	Jan. 13, 1900	26,000	52
229 East 85th St	13,000	Dec. 8, 1899	24,000	54
223 East 85th St	6,000	Mar. 31, 1900	10,000	60
1838 Second Ave.	16,000	Sept. 30, 1899	30,000	53
418 to 422 E. 81st St	37,500	Feb. 20, 1900	51,500	73
444 to 446 E. 85th St	8,500	Feb. 28, 1900	32,000	27
				1,007

Average, 52 per cent.

Section 6.

	Assessed value.	Record of transfer.		Per centage.
59 and 61 East 115th St	$29,000	Feb. 24, 1900	$110,000	26
35 to 41 West 117th St	70,000	Apr. 26, 1900	120,000	58
58 East 105th St	16,000	Nov. 29, 1899	30,000	53
1895 Second Ave.	18,000	Feb. 6, 1900	26,500	68
2222 First Ave. and 403 and 405 East 114th St	14,500	Feb. 21, 1900	32,000	45
335 Pleasant Ave	5,500	Apr. 26, 1900	11,000	50
24 West 125th St	10,500	Dec. 28, 1899	13,500	77
54 to 62 West 125th St	139,000	Apr. 2, 1900	300,000	46
342 East 119 St	15,000	Jan. 4, 1900	25,250	59
				482

Average, 53 per cent.

308 *Section 7.*

	Assessed value.	Record of transfer.		Per centage.
208 West 116th St.	$23,000 00	Feb. 17, 1900	$36,500 00	63
8 West 102d St.	22,000 00	Mar. 30, 1900	36,000 00	61
58 West 106th St.	19,000 00	Aug. 28, 1899	29,750 00	64
850 and 852 West End Ave.	70,000 00	Jan. 2, 1900	125,000 00	56
242 to 252 West 103d St.	70,000 00	Apr. 25, 1900	194,000 00	36
203 to 207 West 106th St.	96,000 00	Jan. 22, 1900	165,000 00	59
747 West End Ave.	13,500 00	Mar. 19, 1900	24,000 00	56
Broadway, N. W. cor. 110th St., 90 x 75 ft.	23,000 00	May 9, 1899	81,000 00	28
154 West 119th St.	11,000 00	Feb. 20, 1900	15,000 00	73
112 West 120th St.	14,000 00	Oct. 3, 1899	31,000 00	45
441 Manhattan Ave.	18,000 00	Nov. 10, 1899	29,000 00	62
364 West 120th St.	9,000 00	Oct. 24, 1899	15,750 00	57
351 West 121st St.	8,500 00	Dec. 7, 1899	17,000 00	50
507 Manhattan Ave.	13,000 00	May 1, 1900	35,000 00	37
352 West 123d St.	9,000 00	Nov. 25, 1899	10,550 00	85
352 St. Nicholas Ave.	15,500 00	Mar. 9, 1900	19,500 00	79
82 Lawrence St.	4,000 00	Nov. 15, 1899	9,500 00	43
158 West 129th St.	18,000 00	Oct. 1, 1900	30,000 00	60
100 and 100½ West 130th St.	34,000 00	May 15, 1900	50,000 00	68
195 St. Nicholas Ave.	16,000 00	June 14, 1900	22,000 00	73
253 and 255 West 117th St.	80,000 00	May 16, 1900	150,000 00	53
306 to 308 West 117th St.	68,000 00	Oct. 8, 1900	125,000 00	54
				1262

Average, 57 per cent.

Section 8.

	Assessed val.	Record of transfer.		Per centage.
1951 Amsterdam Ave.	$15,000	June 5, 1899	$27,500	54
163d St., S. S. east of Amsterdam Ave., blk. 2110, lots 20 to 23.	15,000	Mar. 27, 1899	35,000	43
156th St., east of 8th Ave., block 2105, lot 57.	3,000	May 21, 1900	5,900	51
413 West 156th St., block 2107.	12,000	Feb. 28, 1900	23,500	51
158th & 159th Sts., east of 11th Ave., block 2117, lots 61 and 14.	5,500	Nov. 20, 1899	16,000	34
519 West 162d St., block 2122.	9,500	Nov. 20, 1899	17,500	54
309 Broadway, N. E. cor. 162d S., blk. 2122, lot No. 47.	1,000	Feb. 19, 1900	7,500	13
507 West 166th St., blk. 2123, lot 71	7,000	Nov. 23, 1899	9,000	78
Audubon Ave., north of 170th St., block 2127, lot Nos. 30, 31 and 32.	3,900	Dec. 14, 1899	8,000	49
550 West 173d St., block 2129, lot No. 161.	8,000	Dec. 1, 1899	15,000	53

Section 8—Continued.

	Assessed value.	Record of transfer.		Per centage.
559 West 182 St., blk. 2154, lot No. 60	5,500	Aug. 28, 1899	10,000	55
532 and 533 West 187th St., blk. 2156, lot Nos. 72 and 73	10,000	Mar. 30, 1900	26,000	38
659 West 179th St., blk. 2163, lot No. 43	5,000	Mar. 9, 1900	7,000	71
Sherman Ave., N. E. cor. Academy St., blk. 2225, lot No. 42	1,700	Dec. 7, 1899	2,525	67
Vermilyea Ave., blk. 2226, lot No. 4	600	May 9, 1900	1,400	43
				754

Average 50 per cent.

It is stipulated the certiorari proceedings referred to in the stipulations or concessions in the minutes of the prior proceedings include all the proceedings to review the special franchises, assessments and taxes now pending before the referee.

Defendant's counsel offered in evidence the following reports to which plaintiff's counsel objected on the grounds that all of such reports were immaterial and irrelevant; and that all of such reports covering the year 1900, or any portion thereof, were not before the State Board of Tax Commissioners and could not have been considered by them at the time of making the assessments in question, and that they throw no light upon the value of any of the properties in question at the time of or prior to the assessments of January 7, 1900.

Objections overruled. Exception.

The reports were received in evidence as follows:

Reports of Brooklyn Heights Railroad Company.

Quarterly reports to the State board of railroad commis-
310 sioners for the quarters ending March 31, June 30, September 30 and December 31, 1899, respectively, and for the quarters ending March 31, June 30, September 30 and December 31, 1900, respectively, copies of which are hereto annexed, marked "Def't's Exhibits 1, 2, 3, 4, 5, 6, 7 and 8," respectively.

Statement of earnings, operating expenses, deductions from income and net income for the years ending December 31, 1899, and December 31, 1900, including balance sheets on December 31, 1899, and December 31, 1900, as reported to the State board of railroad commissioners, copies of which are hereto annexed, marked "Def't's Exhibits 9 and 10," respectively.

Annual reports to the State board of railroad commissioners for the years ending June 30, 1899, and June 30, 1900, copies of which are hereto annexed, marked "Def't's Exhibits 11 and 12," respectively.

Reports and supplemental reports to the State Board of Tax Commissioners for the year ending June 30, 1900, a copy of which is hereto annexed, marked "Def't's Exhibit 33."

Brooklyn City Railroad Company.

Quarterly report to the State boart of railroad commissioners for the quarter ending December 31, 1900, including balance sheet on that date, copy of which is hereto annexed, marked "Def't's Exhibit 13."

Annual reports to the State board of railroad commissioners for the years ending June 30, 1899, and June 30, 1900, copies of which are hereto annexed, marked "Def't's Exhibits 14 and 15," respectively.

Reports and supplemental reports to the State Board of Tax Commissioners for the year ending June 30, 1900, a copy of which is hereto annexed, marked "Def't's Exhibit 34."

311 *Nassau Electric Railroad Company.*

Quarterly report to the State board of railroad commissioners for the quarter ending March 31, 1899, a copy of which is hereto annexed, marked "Def't's Exhibit 16."

Annual report to the State board of railroad commissioners for the years ending June 30, 1899, and June 30, 1900, respectively, copies of which are hereto annexed, marked "Def't's Exhibits 17 and 18," respectively.

Coney Island and Gravesend Railway Company.

Quarterly reports to the State board of railroad commissioners for the quarters ending September 30 and December 31, 1900, including balance sheet on December 31, 1900, copies of which are hereto annexed, marked "Def't's Exhibits 19 and 20," respectively.

Kings County Elevated Railroad Company.

Quarterly and annual reports, including the reports of the receiver of the Kings County Elevated Railroad Company to the State board of railroad commissioners for the year ending December 31, 1899, copies of which are hereto annexed, marked "Exhibits 21, 22, 23, 24, 25, 26 and 27," respectively.

Brooklyn Union Elevated Railroad Company.

Quarterly report to the State board of railroad commissioners for the quarter ending March 31, 1899, a copy of which is hereto annexed, marked "Exhibit 28."

Annual reports to the State board of railroad commissoners for the years ending June 30, 1899, and June 30, 1900, copies of which are hereto annexed, marked "Exhibits 29 and 30," respectively.

Reports and supplemental reports to the State Board of
312 Tax Commissioners for the year ending June 30, 1900, a copy of which is hereto annexed, marked "Def't's Exhibit 35."

Prospect Park and Coney Island Railway Company.

Quarterly reports to the State board of railroad commissioners for the quarters ending March 31 and June 30, 1899, copies of which are hereto annexed, marked "Exhibits 31 and 32," respectively.

Brooklyn Rapid Transit Company.

Reports of board of directors to stockholders for the year ending June 30, 1899, and June 30, 1900, copies of which are hereto annexed, marked "Def't's Exhibits 36 and 37," respectively.

Reports of president to stockholders for the years ending June 30, 1899, and June 30, 1900, copies of which are hereto annexed, marked "Def't's Exhibits 38 and 39," respectively.

Defendant rests.

Evidence closed.

[Pages 313 and 314 are missing.]

315 PLAINTIFF'S EXHIBIT 1 H.

Extract from the proceedings of the common council of the city of Brooklyn, at a meeting held July 1, 1889, taken from printed proceedings of 1889, vol. 2, at pp. 435–441.

"*Report of the Committee on Railroads.*

"Whereas, on the 4th day of June, 1888, an application in writing was made to the common council of the city of Brooklyn by the Brooklyn Heights Railroad Company for consent and permission to construct, maintain and operate and use a street surface railroad, for public use, in the conveyance of persons and property, for compensation, in cars, through, over and along the surface of certain streets, avenues and highways in said city; and

"Whereas, the said common council caused due public notice of such application and of the time and place when the same would be first considered, to be given by publication in two daily newspapers published in the city of Brooklyn, to wit: the "Brooklyn Daily Eagle" and the "Brooklyn Citizen," which papers were designated for that purpose by the mayor of said city; and

"Whereas, after due public notice given as aforesaid of such application the common council has, at the time and place designated in such notice, given public hearings in relation thereto, and all persons so desiring were given an opportunity to be heard and were heard, and said application has been duly considered by the said common council; now

"Therefore, in pursuance of chapter 252 of the Laws of 1884, and chapter 642 of the Laws of 1886, and of the other provisions of law applicable thereto, it is hereby

"Resolved, That the consent of the common council of the
316 city of Brooklyn be and is hereby given to the said The Brooklyn Heights Railroad Company to the construction, maintenance, use and operation upon the conditions hereinafter named, and not otherwise, of a street railroad upon and through the following streets and avenues in said city, to wit:

"Commencing at or near the intersection of Court and Montague streets, and running thence through said Montague street with double tracks westerly by the most direct and feasible route to a terminus at or near Wall Street ferry, together with authority to construct and maintain in said street and in such parts of those adjacent thereto as may be necessary, all necessary connections, switches, sidings, turnouts, turntables and suitable stands for the convenient operation of said road and the housing and care of its cars and other equipments, and the connecting said road with its power stations; and be it further

"Resolved, That the conditions upon which, and not otherwise, the said consent is hereby given, are as follows, to wit:

"*First.* That the provisions of chapter 252 of the Laws of 1884, and of chapter 642 of the Laws of 1886 and of all other statutes pertinent thereto, shall be complied with, and all the conditions, obligations, liabilities, payments or duties imposed by virtue of all or any of such statutes are to be regarded as forming a part of those conditions as fully to all intents and purposes as if herein set forth at large.

"*Second.* That the right, franchise and privilege of using the said streets to construct, maintain, use and operate a street surface railroad and the above-mentioned connections upon the said streets, subject to all the provisions of chapter 252 of the Laws of 1884, and of chapter 642 of the Laws of 1886, and of all other statutes pertinent thereto, shall be sold at public auction to the bidder which shall be an incorporated railroad or railway company organ-
317 ized to construct, maintain and operate a street railroad in the city of Brooklyn, for which such consent is given, and which will agree to give the largest percentage per annum of its gross receipts, with adequate security, by a bond or undertaking in writing, and under seal, in such form, condition, amount and sureties as shall be required and approved by the comptroller of the said city, for the fulfillment of the said agreement, and for the commencement and completion of such road according to the plan or plans hereinafter mentioned and on the route or routes hereinabove mentioned, within the time or times designated and prescribed therefor by the provisions of chapter 642 of the Laws of 1886, and the acts amendatory thereof, in addition to the percentage required to be paid by chapter 252 of the Laws of 1884.

"*Third.* That in the construction of the said railroad and its equipment, the materials and work employed shall be of the best quality and character, and the said railroad shall be constructed with rails having the outer edge of bearing flush with the pavement, with inside drop, not exceeding one inch in depth; and that the cars thereon shall be run as frequently as the convenience of the public may require, which plan of construction, quality and pattern of material, number and location of sidings, switches, turn-outs, turn-tables and connections with power stations shall be subject to the approval of the commissioner of public works of said city, provided however, that no cars shall be housed or stored on the main line on Montague street or any of the adjacent streets at any place east of the top of the hill leading to Wall Street ferry.

"*Fourth.* That the bidder to which the aforesaid sale shall be made, and any person or corporation using the tracks constructed or laid under or in pursuance of this consent, shall comply with all reasonable ordinances or regulations which the local authorities having charge of the aforesaid streets or any of them, shall
318 make as to the rate of speed, mode of use of tracks and removal of ice and snow, and with any and all provisions of law applicable to any street surface railroad company organized under chapter 52 of the Laws of 1884, and shall not charge any passenger more than five cents for one continuous ride from any

point on its road, or on any road, or line or branch operated by it, or under its control, to any other point thereon or on any connecting branch thereof within the limits of said city.

"And the said bidder, as to the whole route herein above described, shall be absolutely and unqualifiedly bound, and any person or company using or operating a railroad upon the tracks, or upon any part of the tracks, constructed upon the said route under or by virtue of the consent hereby given or the sale had in pursuance thereof, as to the tracks so used by it or him, shall be jointly or severally bound with the said bidder absolutely and unqualifiedly, whenever and as required and under the supervision of the proper local authorities, to repair and keep in permanent repair, the portion of said street upon which the tracks shall be so constructed, between the tracks, the rails of the tracks and a space two feet in width outside of and adjoining the outside rails of the track or tracks, so long as the tracks so constructed shall continue to be used.

"In case of the neglect of such corporation to make such pavement or repairs, the local authorities of the city of Brooklyn may make the same at the expense of such corporation, after the expiration of thirty days' notice to do so.

"*Fifth.* That the railroad, to the construction or operation of which this consent is given, shall be operated by electric power according to the system of the Bentley-Knight Electric Railway Company, viz.: The plant consists of a stationary source of power,
319 engines, boilers and dynamo-electric machines, which may be located at an extreme end of the line, at tide-water, or at a station situated at a distance from the end of the line, a conduit running from the source of power to and along the whole length of the line, containing stationary and permanent conductors, which receive and distribute the electric current to the motors placed under the cars and geared to the wheels or axles, and a depending conductor which, passing through a slot in the conduit and sliding in contact with the stationary conductors, maintains unbroken connection with the source of power.

"*Sixth.* That any person or company who shall use or operate a railroad upon the tracks, or any part of the tracks, constructed upon the route, hereinabove described, under or by virtue of the consent hereby given, or the sale had in pursuance thereof, shall be subject to the same conditions, liabilities, obligations, duties and payments in respect to such use or operation by him or it of or upon such tracks as the bidder to whom the sale shall be made under this contract would be subject were such use or operation made by such bidder, and in computing any percentage upon gross receipts that may hereby become payable, the amount thereof shall be computed upon the fare received from every passenger who shall ride upon any part of the route hereinabove described, and irrespective of the fact whether such passenger enters or leaves the car at any point upon the said route, and the bidder to whom such sale shall be made shall be jointly and severally liable with any such person or com-

pany for any default in any of such conditions, liabilities, obligations, duties and payments.

"*Seventh.* That the percentage upon gross receipts payable under the bid at such sale shall be made annually on the first day of November, for the year ending on the next preceding thirtieth day of September.

320 "*Eighth.* That the said The Brooklyn Heights Railroad Company shall provide for the expense of publication of the aforesaid notice of sale before the said notice shall be published, and the company which, at the said sale, shall be the highest bidder, shall at the time and place of sale reimburse the said railroad company for all expenses of printing and publishing necessarily incurred by it upon the application and sale herein, under the provisions of said chapter 252 of the Laws of 1884, and of said chapter 642 of the Laws of 1886.

"*Ninth.* This consent is given and the said sale shall be made upon the express understanding that the conditions herein stated do not relieve the said bidder, or and person or company operating a road upon any of the tracks constructed under this consent, from any conditions, obligations, liabilities, payments or duties to which they might have been liable in the absence of such conditions.

"And the omission to express herein any condition, limitation, obligation, liability, payment or duty imposed by any statute upon corporations formed under chapter 252 of the Laws of 1884, and the laws amendatory thereof or supplemental thereto, shall in no wise be deemed on the part of the local authorities of the city of Brooklyn, or any of them, to be a waiver of any such conditions, limitations, obligations, liabilities, payments or duties, but the same shall be deemed to be for all intents and purposes a part of this consent as if fully expressed herein.

"*Tenth.* That if the bidder shall not furnish satisfactory security, the said comptroller may cancel the bid and sell this consent and the license in the same manner as is provided by chapter 642 of the Laws of 1886.

"*Eleventh.* The bidder or bidders to whom the said consent or license shall be sold shall commence the construction of the

321 said road within one year, and complete the same within three years from the date of sale. The said bidder who may build and operate said railroad, shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the comptroller of the city of Brooklyn; and in the event of the failure or refusal of the party or corporation operating or using the railroad to be constructed as aforesaid, to pay the rental or percentage of gross earnings agreed upon, then, upon notice to the said party or corporation—of not less than sixty days—the said consent and right to operate such railroad may be declared forfeited, and the same may be resold to the highest bidder, in the manner provided by chapter 642 of the Laws of 1886, and the acts amendatory thereof; such forfeiture may be decreed or ordered by the judgment

of any court having jurisdiction, after the party or corporation shall have opportunity to be heard in their defense.

"*Twelfth.* That the said bidder shall, within thirty days after the sale at public auction, execute under its corporate seal, to be attested by its president or treasurer, and by virtue of a resolution of its board of directors, and instrument in writing which shall be delivered to the said comptroller of the city of Brooklyn, and which shall contain and express the acceptance by the said bidder of this consent of the common council for the construction, maintenance, use and operation of the proposed railroad upon the streets and avenues above mentioned upon the terms and conditions upon which this consent is granted, and shall bind the said company to abide by, comply with, faithfully perform and keep the said terms and conditions. And be it further

"Resolved, That the sale at public auction of the right, franchise and privilege mentioned above shall be attended and conducted by the comptroller of the city of Brooklyn, and shall be held at
322 a place in the city of Brooklyn to be designated by the said comptroller, and on the earliest practicable day to be designated by the said comptroller, or at such time to which the same may be adjourned from the day specified in the notice so published, not exceeding twice, for a period not exceeding four weeks in the aggregate, and only after notice of the time, place and terms thereof, and of the route or routes to be sold, and of the conditions upon which this consent is given, shall have been published by the said comptroller three times a week for at least three weeks, in two daily newspapers in said city, to be designated by his honor the mayor of said city, and if the bidder to whom such sale shall be made shall not furnish satisfactory security as herein provided, the said comptroller may cancel the bid and resell this consent and the license in the matter herein above provided; and

"Whereas, by chapter 665, Laws of 1887, the construction of any railroad in Montague street is prohibited unless the consent of a majority of the owners of property abutting thereon shall first be obtained; and

"Whereas, the shortness of the street will enable such consents to be quickly obtained if the majority of the property-owners are in favor of the railroad hereinabove provided for, while the existence of a claim to a right to build a road which they do not approve of, will be an injury to their property and a public detriment; it is therefore further

"Resolved, That the consent of the local authorities of the city of Brooklyn, hereinabove provided for, shall not attach, take effect or vest any right in the purchaser at the sale thereof, nor shall the purchase be complete unless and until the purchaser shall obtain and file with the clerk of the county of Kings the consent in writing of the owners of a majority in value of the property abutting
323 upon said streets to the construction and operation of said railroad, duly acknowledged by such owners and approved by the council to the corporation.

"That such consents shall be delivered to said corporation counsel for his approval within sixty days from such sale, and in case the purchaser thereat shall fail to procure and deliver to said corporation counsel such consents within said period (which is hereby declared to be a reasonable period for that purpose), said sale and purchase and the consent hereby given shall not take effect and shall be and become void.

"Respectfully submitted.

"M. J. COFFEY,
"E. C. MURPHY,
"MOSES W. WEEKS,
"JAMES McGARRY,
"SAMUEL M. WEEKS,
"*Committee on Railroads.*

"The resolution was adopted by the following vote:
"Affirmative—17. Negative—none.
"Unanimous consent was granted."

EXHIBIT 2 H.

(The certificate of Theodore F. Jackson, comptroller of the city of Brooklyn, dated April 21, 1890, certifies that pursuant to said resolutions of the common council he did on February 25, 1890, sell at public auction, after due advertisement, the right, privilege and franchise to construct, maintain, use and operate a street surface railroad upon the streets and avenues, fully described by the same description as in said resolutions; that said sale was made upon the terms and conditions specified in the said resolution; "that at such sale the Brooklyn Heights Railroad Company bid and offered to me for the said right, franchise and privilege one-tenth of one per centum per annum of its gross receipts, and that being
324 the highest amount bidden and said company the highest bidder, the said right, franchise and privilege was struck down and sold to said company, and that said company has complied with the terms and conditions of said sale and has given the several bonds required thereby, which bonds have been duly approved and filed in the office of the comptroller of the city of Brooklyn.")

EXHIBIT 3 H.

(Section 49 sub. 21 of the Greater New York charter (Laws 1897, chap. 378) was amended by the revised Greater New York charter, chapter 466 of the Laws of 1901 to take effect January 1, 1902, but as now in force reads as set out in the following quotation except that the brackets and the words in italics should be struck out.

Subdivision 17 of the amended section 49 takes the place of former subdivision 21 of the former section 49 and the new section 49, sub. 17, now reads as given in the following quotation, except

that the words inclosed in brackets are to be struck out and the words in italics are to be read:

"SEC. 49. [Subject to the provisions of this act, the municipal assembly] *The board of aldermen* [shall have the power [within said city] to make, [establish, publish and modify], amend [or] *and* repeal ordinances, rules, regulations and by-laws not inconsistent with this act, or with the Constitution [or the] *and* laws of the United States, or of this State, for the following purposes:

* * * * * * *

[21.] 17. [The municipal assembly] *And the board of aldermen* shall also fix the annual license fee, not exceeding the sum of twenty dollars, for each street or horse car daily operated or used in that portion of the city heretofore known as the city of Brooklyn. Every railroad company operating or using such cars shall, on or before the first day of June in each year, certify to the city clerk the average number of cars daily operated and used by said company, which certificate shall be verified by oath of one of the managing officers of said company, and every such railroad company shall, on or before the first day of July in each year, pay to the chamberlain of the city of New York the license fees so established for the average number of cars so operated and used by said company. The said license fees shall be taken in full satisfaction for the use of the streets or avenues, but the same shall not release said company from any obligations required by law to keep such streets and avenues or any part thereof in repair, which said obligations and the contracts, laws or ordinances creating and enforcing the same, are hereby continued in full force and operation. But nothing in this subdivision shall be construed to release any railroad company in the city of New York, as constituted by this act, from any duty or obligation existing at the time this act takes effect by virtue of any law, ordinance or contract."

The foregoing provision as to car licenses originated with the amendment to the charter of the city of Brooklyn, made by chapter 564 of the Laws of 1880, which added such provision as subdivision 11 of title II., section 13 of the charter of the city of Brooklyn, being chapter 863 of the Laws of 1873. Such provision was again amended by chapter 213 of the Laws of 1882, and was again amended when incorporated in the revised charter of the city of Brooklyn by chapter 583 of the Laws of 1888, title II., section 12, subdivision 10, page 959.

The foregoing quotation, after striking out the brackets and the words in italics, represents section 49, subdivision 21 of the first Greater New York charter (Laws 1897, chap. 378).

The following quotation, after striking out the brackets and the words in italics represents the original act of 1880, chapter 564; and after striking out the words in brackets and reading the words in italics, represents the amendment of 1882 (chap. 213), except that the last word inclosed in brackets "now" was included in the amendment of 1882:

"The common council shall also fix an annual license fee
326 not exceeding the sum of twenty dollars for each street or horse car daily operated and used in said city. Every railroad company operating or using such cars shall, on or before the first day of June in each year, certify to the city clerk the average number of cars daily operated and used by said company, which certificate shall be verified by the oath of one of the managing officers of said company; and every such railroad company shall, on or before the first day of July in each year, pay to the treasurer of said city the license fee so established, for the average number of cars so operated [and] *or* used by said company. Said license fees shall be taken in full satisfaction for the use of the streets or avenues [of said city], but the same shall not relieve said companies from any obligation [now] required by law to keep such streets and avenues, or any part thereof in repair."

The foregoing quotation, after striking out the words in brackets and reading the words in italics, represents this provision as amended in the Brooklyn city charter of 1888 (chap. 583, title II., sec. 12, sub. 10, p. 959), except that the word "and" in brackets is to be read instead of the word "or" in italics.

Extract from annual message of mayor of city of Brooklyn to common council January 5, 1880, taken from printed volume of proceedings of the board of aldermen of the city of Brooklyn for 1880, volume 1, at pages 33–4.

"*Increasing the Revenues of the City to Help the Real Estate Interest.*

I beg to call your attention to the consideration of some measure by which the revenues of the city can be increased, in order to insure our real estate against the possibility of any greater tax burden than is at present imposed upon it. * * * I doubt if there is
327 any considerable city in the country in which so large a portion of its expenditure falls upon real estate as in the city of Brooklyn. Practically real estate is expected to support the whole burden of our local government. This is not good public policy and it is not just. For all the public franchises we have granted we receive little or no direct benefit in return. Our street railroads, some of them the most profitable in the Union, pay little or nothing to the city treasury. Even the paltry license fees on their street cars seems to be largely evaded * * *. In St. Louis all storekeepers and every citizen engaged in a professional calling, except clergymen, are specially taxed for the support of the local government, and on the theory that only by exacting a special tax from them can they be brought to bear their fair share of the cost of the local government. I am satisfied if this subject is taken up by your honorable body sources of revenue that will yield the interest on the park debt, or on the bridge debt, can be opened up without injustice to any class, or without imposing any considerable burden upon individuals. The development of these sources of

revenue would insure Brooklyn against all difficulty, and it would enable us at the same time to relieve real estate, whose owners make up the great body of our taxpayers, from the unfair share of the public burdens which I think has always been exacted from them in this city. I commend this subject to your consideration, and I will be glad to co-operate with you, and to place in your possession such information as I have been enabled to gather from the official records of other cities."

Extract from proceedings of the common council of the city of Brooklyn, at a meeting thereof held January 12, 1880, taken from printed volume of proceedings for 1880, volume 1, page 115.

"Resolved, That so much of his honor the mayor's message under the heading 'Increasing the revenues of the city to help the real estate interest,' found on pages 33 and 34 of the printed
328 proceedings of this board of January 5, 1880, be referred to a committee of five appointed by the chair to take the same into consideration, and report if any action by this board on such subject is advisable, and, if so, what action."

"The resolution was adopted."

Extract from proceedings of the common council of the city of Brooklyn, at a meeting thereof held March 29, 1880, taken from printed volume of proceedings for 1880, volume 1, at page 627:

"*Communications from Officers.*

MAYOR'S OFFICE, CITY HALL,
BROOKLYN, *March* 29, 1880.

From the mayor to the honorable the common council.

GENTLEMEN: Some weeks since I caused a bill to be prepared, enlarging the powers of the common council relating to occupations made subject to license. This bill was introduced in the State senate, was amended in committee, and passed the senate without opposition. I had reason to expect that, as amended, it would have passed the assembly promptly. Action by that body has been withheld; it is doubtful if it obtains passage in time for any action on your part prior to the day on which the licenses expire. Section 2, article 1, chapter 2, of ordinances declares that licenses heretofore issued shall expire on the first Monday of April next. I entertain hopes that the bill will soon become a law, so that a revision of the ordinances relating to licenses may be had by your body. In view of the situation I deem it advisable to recommend a delay in the issue of licenses."

329 Extract from proceedings of the common council of the city of Brooklyn, at a meeting held February 9, 1880, taken from printed volume of proceedings for 1880, vol. 1, at pp. 314–317.

"*Report of Special Committee on Increase of City Revenue.*

"To the honorable the common council.

GENTLEMEN: Your special committee to whom, upon resolution of Ald. Dimon on January 12, 1880, was referred that part of his honor the mayor's message under the heading 'Increasing the revenues of the city to help the real estate interest,' to take the same into consideration and report if any action by this board on such subject is advisable, and if so, what action, respectfully reports progress as follows:

Report.

"That they have duly considered the portion of the mayor's message so referred to them, and finding that the same treated of the proposition of increasing the city's revenue by means of fees obtained, or to be obtained, for licenses issued for the various subjects or purposes liable to be licensed, have directed their deliberations to the following points:" * * *

"Your committee, in the course of their deliberations, have obtained information as to the subject of licenses in other cities, and the revenue derived from them, in comparison with which the receipts in this city from such source seem meagre indeed." * * *

"From this comparison of facts, your committee deem it clearly established that a much larger revenue than is now received from this source can be had without prejudice to the business interests of our city, and without unfavorable comparison with other cities.

The necessity for an increase of revenue from some source is
330 claimed by your committee to be conceded by all acquainted with the subject of the finances of our city."

"Taxation of real estate is, of course, the simplest method of imposing taxes, but the endurance of such taxation has a limit.

"The extraordinary amount of uncollected taxes of that class, the stagnation in the sale of real estate, and the stoppage of buildings and other improvements upon real estate, as now existing, appear to show that the limit has been reached, or even passed." * * *

"Your committee hope to be able, at an early date, to report their conclusions and recommendations upon the other propositions upon which they have not arrived at a determination."

Extract from proceedings of the common council of the city of Brooklyn, at a special meeting thereof held July 21, 1880, taken from printed volume of proceedings of 1880 (fol. 2, at pp. 116-118).

"Ald. Black presented the following communication from his honor the mayor:

MAYOR'S OFFICE, CITY HALL,
BROOKLYN, *July* 21, 1880.

To the honorable the common council.

GENTLEMEN: I directed that a special meeting of your honorable board be held to-day for the reason that it has become necessary that definite action be taken in your councils upon questions connected with the subject of licenses under the provisions of chapter 564 of the Laws of 1880, entitled 'An act to amend chapter eight hundred and sixty-three, of the Laws of eighteen hundred and seventy-three,' entitled 'An act to amend the charter of the city of Brooklyn and the various amendments thereof,' passed June 16, 1880." * * *

331 The present condition of affairs imposes a duty on the local authorities to devise every equitable measure possible for revenue. Real estate bears an exceedingly large proportion of the expenses of the city government; personal property and general business in this community contributes but a very inconsiderable sum to the city revenue, while by far the greater protection is afforded to personal property by every department of the city government. It is reasonable that all kinds of business which receives protection in this community enjoy the advantages which flow from a well-regulated police and fire department, and which contributes to the wear and tear of the streets, should bear a proportion of the expense for maintaining the government which affords such advantages. * * * I have examined the report of the special committee appointed by your body to consider and report upon the matter of license. I think the report proposes very inadequate rates for licenses, and does not embrace all subjects which should be brought under license; but I accept it as a step in advance which may open the way to larger revenue.

I have to respectfully request that you will give this particular business your prompt consideration and action in the establishment of ordinances to govern and regulate the matter of licenses in our city.

Respectfully, JAMES HOWELL, *Mayor*."

Extract from proceedings of common council of the city of Brooklyn, at a meeting thereof held December 27, 1880, taken from printed volume of proceedings, vol. 2, at pp. 796, 809–10.

Special Order.

The president announced the business in order to be the consideration of report of special committee on increase of city rev-
332 enue in reference to revision of license rates.

"The report was then presented as follows:

"The special committee on increase of the revenue, to whom was

recommitted their report made July 21, 1880 (page 761, minutes December 20, 1880), respectfully

Report.

"That they have again considered the subject, and are of the opinion that the ordinance as offered by them on July 21, 1880, should be adopted; they therefore again offer for adoption the following:

Ordinance of the City of Brooklyn.

CHAPTER II.

* * * * * * *

"Ald. Baird then moved that the ordinances attached to the report as amended, be adopted. * * *

"The ordinances as adopted read as follows:

Ordinance of the City of Brooklyn.

CHAPTER II.

"The common council of the city of Brooklyn do ordain as follows:

ARTICLE I.

"SECTION 1. Licenses shall be granted by the mayor, from time to time, to such persons as he may deem proper, to carry on the business or trade, or to act in the capacity, of coachmen, porters, owners and drivers of hacks, trucks, cabs, omnibusses, stages, railroad cars, and all other vehicles used upon the public streets in the conduct of any business, except that of physicians, and as common carriers, and carriers of passengers, common criers, hawkers,
333 peddlers, pawnbrokers, auctioneers, keepers of intelligence offices, junk-shop keepers, sweeps, meat sellers, fishmongers, keepers of slaughter houses, and dealers or speculators in tickets to theatres, or other places of amusement; also, to license the exhibition of circuses, menageries, common shows, theatres, opera halls, playhouses, and all other places of public amusement, and the keepers of billiard tables, bowling alleys, and shooting galleries, Chinese laundries, undertakers, real estate and insurance brokers: provided, that licenses shall be granted to no persons other than citizens of the United States.

"§ 2. The licenses granted as above mentioned shall be issued by the city clerk on notice to him from the mayor, and shall respectively state the purpose for which they are granted, the number of the license, and the name of the person licensed; and in case of omni-

buses and stage coaches and railroad cars, the avenues and streets to which their route shall be limited; and all such licenses shall expire on the first Monday of April next after the same shall be granted.

"§ 3. There shall be charged and paid to the city clerk (except in the case of railroad cars, whose payment shall be made to the city treasurer), for the use of the city, on issuing the said licenses, by the parties to whom they may be granted, the following sums:

* * * * * * *

For each railroad car, large or small, on horse railroad or steam railroad, $20."

334 EXHIBIT 4 H.

Report of the Brooklyn Heights Railroad Company to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1899.

OFFICE OF THE
STATE BOARD OF TAX COMMISSIONERS,
ALBANY, *October 1st*, 1899.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws of 1899, a copy of which is enclosed herewith.

It is requested that you complete and forward such report within thirty days, as required by that act.

Very respectfully,

STATE BOARD OF TAX COMMISSIONERS.

Extract from law relating to taxation of special franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water,
335 all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in,

upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any
336 street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

SCHEDULE A.

Title of company, the Brooklyn Heights Railroad Company.
General offices at 168 Montague street, Brooklyn, N. Y.
Date of close of fiscal year, June 30.
For information concerning this report address T. S. Williams, 168 Montague street, Brooklyn, N. Y.

Officers of the Company, with Address.

President, Clinton L. Rossiter, 168 Montague street.
Vice-president, Theodore F. Jackson, 168 Montague street.
Secretary and treasurer, T. S. Williams, 168 Montague street.
General manager, Clinton L. Rossiter, 168 Montague street.

SCHEDULE B.

Description of special franchise, showing streets, highways, or public places possessed or rights enjoyed and in what village,
337 tax district, or districts same is located, and statement of maps accompanying this report.

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This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

SCHEDULE C.

Copy of special law, grant, ordinance or contract or reference to general law under which "special franchise is held, possessed or enjoyed and statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed."

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238 SCHEDULE D.

Statement of Assets and Liabilities June 30, 1899.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate & improvements.	$458,932 25	Capital stock	$200,000 00
Cost of equipment	6,465 60	Funded debt	250,000 00
Stock & bonds of other companies.		Accounts and bills payable.	292,231 91
Materials and supplies	152,370 93	Int. on funded debt due & accr'd.	3,125 00
Accounts and bills receivable.	447,820 01	Rentals due and accrued	613,748 90
Cash on hand	437,553 88	Dividends unpaid	
Brooklyn City const'n ac	4,764,048 86	Int. on real estate mtges	517 72
Prepaid insurance	37,985 04	B. R. T. Co.'s equity in B. city's const. ac	4,730,476 79
		Real estate mortgages	19,000 00
		Taxes accrued	196,076 25
Profit and loss		Profit and loss	
Total	$6,305,176 57	Total	$6,305,176 57

SCHEDULE E.

Capital Stock.

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	Amount.	Highest.	Lowest.	Present.
Common issued	2,000	$200,000 00	None.		No sales or quotations.		
Preferred issued							
Total							

SCHEDULE F.

Funded Debt.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
1st mtge	Apl. 1, 1891	1941	$250,000 00	5 per cent.	Ap'l and Oct.	No sales to our knowledge.		

340 *Statement of Receipts and Disbursements for Year Ending June 30, 1899.*

SCHEDULE G.

Including Receipts from and Disbursements on Account of About 72 Miles of Railroad on Private Property not Included in Special Franchises.

Receipts.	Amount.
From actual operation	$7,237,755 00
Interest and dividends	12 77
Rentals from tracks, buildings, etc.	64,631 80
Other sources	110,047 99
Sales of stocks and bonds	
Temporary loans	
Deficit	
Total	$7,412,447 56

Disbursements.	
Salaries of general officers and clerks	$108,502 71
Law expenses	86,678 88
Other general expenses	630,892 63
Other operating expenses	3,590,042 78
* Maintenance and reconstruction or new construction paid from earnings	
* Maintenance, reconstruction or new construction paid from other sources	
Rentals	2,268,339 15
Interest paid	21,569 81
Taxes on capital stock and earnings	103,295 64
Taxes on property in this State	149,958 64
Taxes on property in other States	

* For these two items see annual report filed with R. R. commissioners.

Schedule G—Continued.

Disbursements.	Amount.
Dividends paid, none, common stock	
Dividends paid, none, preferred stock	
Surplus	453,167 32
Total	$7,412,447 56

341 SCHEDULE B.

The following is a description of the tangible real property included in the special franchises assessable as aforesaid to the Brooklyn Heights Railroad Company.

I.—*Tangible Real Property Owned and Operated by the Brooklyn Heights Railroad Company, All Situated in the Borough of Brooklyn.*

Montague street, from Court street to Montague terrace, 2,060 feet double track with underground cable construction. Laid in or about October, 1898.

500 feet single track from Furman street on State street to power house. Laid in 1899.

II.—*Tangible Real Property Owned by Brooklyn City Railroad Company, Lessor, and Possessed and Operated by the Brooklyn Heights Railroad Company, Lessee, All in the Borough of Brooklyn Except as Otherwise Indicated.*

1. From Fulton ferry at foot of Fulton street, through Fulton street to Manhattan crossing.

29,280 feet double track. 55,971 feet single track is 9-inch girder rail weighing from 90 to 98½ pounds. 1/5 of the track is 5 years old and 4/5 is 3 years old. In connection are 2,268 feet of sidings, of which 2,184 feet is 9-inch 90-pound rail and 85 feet is flat rail, with 16 tongue switches, 16 mates and 16 frogs, and special work consisting of 51 tongue switches, 47 mates, 176 frogs and 2,589 feet of curved single track and 8 crossovers.

2. From Fulton street on Court street to Hamilton avenue.

7,872 feet of double track. Of this 9,709 feet single track is 9-inch

94 to 98½-pound rail; 5,069 feet is 6-inch 66-pound rail. In
342 connection are 4 pieces of special work with 12 tongue switches, 8 mates, 24 frogs and 967 feet of curved single track. Of this track the 9-inch rail has been laid 2 years and the 6-inch rail has been laid 8 years.

3. From Fulton ferry on Furman street to Atlantic avenue.

4,330 feet of double track, being 8,150 feet single track flat rail. Age of rail is 5 years. On this line are 3 crossovers and 3 pieces of special work made up of 7 tongue switches, 13 mates and 22 frogs and 510 feet of curved rail.

4. From Atlantic avenue on Columbia street to Hamilton avenue.

4,000 feet double track, of which 7,352 feet of single track is 9-inch 94-pound rail. This line has 3 pieces of special work, consisting of 6 tongue switches, 6 mates, 30 frogs and 648 feet of curved single track and 1 crossover. Age of rail is 1 year.

5. From Hamilton avenue, on Richards street to Erie basin.

3,450 feet double track, being 6,900 feet of single track 9-inch girder rail, 94-pound. Age of rail is 1 year. On this line is 1 crossover.

6. Hamilton avenue from Hamilton ferry to Third avenue.

7,655 feet double track. Of this 14,736 feet of single track is 9-inch 90-pound rail. Age of rail, 1/7 is 3 years, 6/7 is 4 years. In connection are sidings, consisting of 518 feet of straight track, 342 feet of curved track, 5 tongue switches, 5 mates, 7 frogs; also 4 pieces of special work, consisting of 9 tongue switches, 7 mates, 34 frogs and 574 feet single curved track.

7. Sackett street, from Columbia street to the ferry.

343 1,391 feet double track, of which 2,139 feet of single track is 9-inch girder rail, 94-pound. Age of rail is 1 year. Two pieces of special work, consisting of 8 tongue switches, 8 mates, 12 frogs, 643 feet of single curved track and 3 crossovers.

8. Third avenue, from Flatbush avenue to Fort Hamilton.

32,402 feet double track. Of this 62,945 feet single track is 9-inch 94-pound girder rail. In connection are 1,322 feet of sidings with flat rail, with 11 tongue switches, 11 mates, 18 frogs and 1,342 feet of curved rail. In connection also are 11 pieces of special work, with 41 tongues switches, 41 mates, 92 frogs, 1,859 feet of curved track and 3 crossovers. Life of rail is 8 years. Age of rail, 2/5 4 years, 1/5 3 years and 2/5 2 years.

9. Second avenue, from Thirty-ninth street to Sixty-fifth street.

6,912 feet of double track, of which 13,197 feet of single track is Lewis & Fowler girder rail weighing 65 pounds. In connection are 4 pieces of special work consisting of 10 tongue switches, 10 mates, 22 frogs and 627 feet of single curved track. Age of rail is 8 years. Life of rail, 8 years.

10. Between Second and Third avenues on Thirty-ninth street and Sixty-fifth street.

1,500 feet double track, of which 2,140 feet of single track is 9-inch rail, 182 feet flat rail and 678 feet is special work, with 1 piece of special work on Sixty-fifth street consisting of 1 tongue

switch, 1 mate and 1 frog. Age of rail is 4 years. In connection are 3 crossovers.

11. On Bay Ridge avenue, from Third avenue to Thirteenth avenue; on Thirteenth avenue, from Bay Ridge avenue to Eighty-sixth street; on Eighty-sixth street, from Thirteenth avenue
344 to Twenty-fifth avenue; on Twenty-fifth avenue from Eighty-sixth street to Ulmer park.

24,609 feet double track, of which 48,213 feet of single track is 9-inch 94-pound girder rail. Age of rail, 2/5 is 5 years, 3/5, 1 year. In connection are 800 feet of sidings with 2 tongue switches, 2 mates, 12 frogs and 415 feet of curved rail, of which 385 feet is flat rail and the balance 9-inch girder rail. In connection are 4 pieces of special work, consisting of 12 tongue switches, 12 mates, 13 frogs, 1,005 feet of curved track and 1 crossover.

12. Flatbush avenue, from Fulton street to Avenue N; on Avenue N, from Flatbush avenue to Avenue U; on Avenue U, from East Seventy-second street to East Seventy-sixth street; on East Seventy-sixth street, from Avenue U to Avenue X; on Avenue X, from East Seventy-sixth street to Bergen beach.

41,667 feet double track, of which 81,208 feet of single track is 9-inch girder rail, 90 and 94 pounds per yard. Age of this rail, $\frac{1}{4}$ is 4 years, $\frac{1}{2}$, 3 years, and $\frac{1}{4}$, 2 years. The life of the rail is 8 years. In connection are 4,150 feet of sidings, of which 29 feet is 9-inch girder rail, 3,565 feet is flat rail and 349 feet is special work. In connection are 5 crossovers and 9 pieces of special work, consisting of 35 tongue switches, 35 mates, 73 frogs and 2,126 feet of curved rail, all 9-inch girder.

13. Avenue C, from Flatbush avenue to Coney Island avenue.

3,348 feet of double track, of which 6,695 feet of single track is 6-inch T rail. Age of rail is 1 year. Life of rail, 20 years. 6-inch T rail weighing 60 pounds to the yard. In connection are 2 pieces of special work and 1 crossover.

14. Beginning at Broadway and Driggs avenue, along
345 Driggs avenue to Division avenue, along Division avenue to Lee avenue, along Lee avenue to Nostrand avenue, along Nostrand avenue to Flatbush avenue.

29,324 feet of double track, of which 56,566 feet of single track is 9-inch girder rail weighing 90 pounds to the yard. Life of rail 1/5 is 5 years old, 1 15, 4 years old, 3 5, 3 years old, and 2/15, 1 year old. In connection are 400 feet flat rail sidings weighing 50 pounds to the yard, and 9 pieces of special work consisting of 15 tongue switches, 13 mates, 58 frogs and 2,082 feet of curved rail with 6 crossovers.

15. Malbone street, from Nostrand avenue to Flatbush avenue.

3,157 feet of double track, of which 5,834 feet of single track is 9-inch 94-pound girder rail. Life of rail is 8 years. In connection is 1 piece of special work with 2 tongue switches, 2 mates, 6 frogs and 180 feet curved single track.

16. From Nostrand avenue, on Vernon avenue, to Holy Cross

cemetery, and on Old Clove road, from Church avenue to a point between Avenue B and Avenue C.

2,993 feet of double track. Of this 1,387 feet is 9-inch 90-pound girder rail and 4,600 feet of single track is 50-pound flat rail. In connection is 1 piece of special work with 300 feet of curved rail, 2 tongue switches, 2 mates and 6 frogs. 5 years.

17. Beginning at Broadway and Roebling street, on Roebling street to Division avenue, on Division avenue to Harrison avenue, on Harrison avenue to Tompkins avenue, on Tompkins avenue to Fulton street.

13,262 feet of double track. Of this 14,179 feet of single track is 9-inch 98½-pound girder rail; 10,767 feet of single track is
346 9-inch 94-pound girder rail. In connection are 2 crossovers and 4 pieces of special work consisting of 4 tongue switches, 4 mates, 40 frogs, 1,578 feet of curved 9-inch single track. Age of rail, ⅓ is 2 years, ⅔, 1 year.

18. On Kingston avenue from Fulton street to Douglass street.

3,120 feet of double track, of which 6,050 feet of single track is 9-inch 90-pound girder rail. In connection are 190 feet of curved rail and 1 crossover. Age of rail is 1 year. Life of rail is 8 years.

19. From Fulton and Sands street-, on Sands street to Hudson avenue, on Hudson avenue to Nassau street, on Nassau street to Navy street (single track); on Sands street from Hudson avenue to Navy street, on Navy street to Flushing avenue (single track); on Flushing avenue from Navy street to Maspeth.

29,388 feet of double track. Of this 42,253 feet of single track is 9-inch 94-pound rail and 14,330 feet is 9-inch 98½-pound rail. In connection are 5 crossovers and 12 pieces of special work consisting of 14 tongue switches, 14 mates, 170 frogs and 2,195 feet of curved single track. Age of rail, 2/5 is 2 years and 3/5 1 year. The portion in Queens borough is 7,480 feet double track.

20. On Willoughby street from Fulton street to Raymond street.

2,873 feet of double track, of which 5,638 feet of single track is 9-inch girder rail weighing 98½ pounds to the yard. This track was laid in 1899. In connection are 1 crossover and 1 piece of special work consisting of a tongue switch, 1 mate, 5 frogs and 108 feet of 9-inch curved rail.

21. On Rockwell place and Navy street from Fulton street to Park avenue.

347 3,275 feet single track, of which 2,503 feet single track is 9-inch 94-pound girder rail. In connection are 5 pieces of special work consisting of 5 tongue switches, 5 mates, 5 frogs and 772 feet of 9-inch curved girder rail. Age of rail 3/5 is 3 years and 2/5 is 1 year.

22. On Raymond street, from Willoughby street to Park avenue.

1,650 feet of single track, of which 1,294 feet single track is 9-inch 94-pound rail. In connection are 2 tongue switches, 2 mates, 2 frogs and 356 feet 9-inch curved girder rail. Age of rail is 1 year.

23. Park avenue, from Navy street to Washington avenue.

3,460 feet of double track, making 6,685 feet of single track 9-inch 98½-pound rail, with 2 pieces of special work consisting of 4 tongue switches, 4 mates, 12 frogs and 235 feet 9-inch curved rail. Age of rail is 1 year.

24. Myrtle avenue, from Fulton street to Richmond hill.

49,413 feet double track. Of this, 96,085 feet single track is 9-inch 94-pound rail, 810 feet single track is 6-inch 66-pound rail, with 774 feet of sidings, single track, of which 574 feet is 9-inch 94-pound rail, with 4 tongue switches, 4 mates, 5 frogs and 200 feet of 9-inch curved rail. In connection there are 8 crossovers and special work consisting of 33 tongue switches, 27 mates, 156 frogs and 1,931 feet of single track 9-inch curved rail. Age of rail, 1/6 is 3 years, 1/4 2 years, 7/12 1 year. The portion in the borough of Queens is 21,499 feet double track.

25. Greene avenue, from Fulton street to Franklin avenue; on Franklin avenue to Gates avenue; on Gates avenue to Broadway; from Broadway and Gates avenue on Gates avenue to Myrtle
348 19,652 feet double track. Of this 38,156 feet single track is 9-inch 94-pound rail, with 500 feet of siding, of which 272 feet is straight 9-inch rail and 128 feet curved rail. In connection there are 1 crossover and 8 pieces of special work consisting of 10 tongue switches, 10 mates, 120 frogs and 1,148 feet of single track 9-inch curved rail. Age of rail, 2/3 is 3 years, /12 is 2 years.

26. Putnam avenue, from Fulton street to Nostrand avenue; Halsey street, from Nostrand avenue to Irving place.

17,865 feet double track. Of this 34,631 feet single track is 9-inch 94-pound girder rail. Age of rail, 1/7 is 4 years, 1/2, 3 years, 1/7, 5 years, 3/14, 1 year. In connection are 300 feet of single track sidings, of which 140 feet is flat rail and 160 feet curved track, with 8 tongue switches, 8 mates and 8 frogs. In connection are 4 pieces of special work consisting of 2 tongue switches, 2 mates, 2 frogs, 1,099 feet special work with 3 crossovers.

27. Gwinnett street, from Throop avenue to Nostrand avenue.

2,233 feet double track. Of this 3,937 feet single track is 9-inch 94-pound rail, all laid in 1899. In connection is 1 crossover and special work consisting of 2 tongue switches, 2 mates, 6 frogs and 529 feet of curved 9-inch rail.

28. Throop avenue, from Broadway to Floyd street.

2,482 feet double track, of which 4,214 feet single track is 9-inch 94-pound rail. In connection are 4 tongue switches, 4 mates, 28 frogs and 750 feet of curved 9-inch rail. Age of rail, 1/3 is 2 years, 2/3, 1 year.

29. Commercial avenue, from Manhattan avenue to Franklin street; on Franklin street to Kent avenue; on Kent ave-
349 nue to Washington avenue; on Washington avenue to Myrtle avenue; also on Classon avenue, from Kent avenue to Myrtle avenue.

22,160 feet double track, of which 40,783 feet single track is 9-inch 94-pound girder rail, with 100 feet of 9-inch single track sidings. In connection there are 10 pieces of special work consist-

ing of 35 tongue switches, 29 mates, 109 frogs, 3,537 feet of curved special work and 3 crossovers. Age of rail, 1/4 is 1 year, 1/5, 3 years, 1/20, 2 years, 1/2 laid in 1899.

30. Vernon avenue, from Borden avenue to Manhattan avenue; Manhattan avenue, from Newtown creek to Driggs avenue, including Box street from Manhattan avenue to Oakland street.

8,097 feet double track, making 15,091 feet single track, of which 11,913 feet is 9-inch 94-pound girder rail and 1,478 feet is flat rail, with 1,150 feet single track sidings, of which 775 feet is 9-inch rail and 150 feet flat rail with 6 tongue switches, 8 mates, 10 frogs and 225 feet curved rail. In connection are 5 crossovers and 10 pieces of special work consisting of 25 tongue switches, 23 mates, 64 frogs and 1,103 feet of curved track. Age of rail, 1/6 is 3 years and 5/6 2 years. The portion on Vernon avenue in Queens county is 850 feet long.

31. Greenpoint avenue, from East river to Calvary cemetery.

7,800 feet double track, making 3,345 feet single track 9-inch 94-pound rail, 11,621 feet flat rail 66-pound, 500 feet siding, single track, with 7 tongue switches, 7 mates, 9 frogs and 375 feet curved track with 4 crossovers and 1 piece of special work consisting of 11 tongue switches, 11 mates, 25 frogs and 634 feet curved track. Age of rail, 9-inch rail, 2 years, flat rail, 10 years. The portion in Queens borough is 2,180 feet double track.

350 32. Meserole avenue, from Franklin street to Manhattan avenue.

1,502 feet double track, making 2,756 feet single track flat rail and 245 feet of curved track. Age of rail is 10 years.

33. Nassau avenue, from Meeker avenue to Bedford avenue; Bedford avenue, from Manhattan avenue to Broadway.

7,808 feet double track (Bedford avenue being single track between South Fourth street and Manhattan avenue), making 14,768 feet single track, of which 6,653 feet is 9-inch 94-pound rail, 7,515 feet is Lewis & Fowler 65 pound rail, 600 feet is flat 66-pound rail. In connection are 1 crossover and 4 pieces of special work consisting of 2 tongue switches, 2 mates, 18 frogs and 848 feet curved track. Age of rail, 9-inch rail is 1 year, Lewis & Fowler rail, 6 years.

34. Driggs avenue, from Graham avenue to Broadway.

3,985 feet double track (Driggs avenue being single track between Broadway and Union avenue), making 6,976 feet single 9-inch 94-pound rail. Age of rail is 1 year. In connection are 5 pieces of special work consisting of 1 tongue switch, 1 mate, 45 frogs and 995 feet of curved rail.

35. Union avenue, from Driggs avenue to Broadway.

5,509 feet double track, of which 10,633 feet single track is 9-inch 94-pound rail. In connection are 2 pieces of special work consisting of 32 frogs and 386 feet of curved track. Rail all laid since July 1, 1899. The rail on this line removed since July 1, 1899, was 60-pound rail which was entirely worn out.

36. Lorimer street, from Bedford avenue to Broadway.

7,281 feet double track, making 14,021 feet single track

351 9-inch 94-pound rail. In connection are 1 crossover, 2 pieces of special work consisting of 32 frogs and 541 feet of curved track. This track was laid in the summer of 1899. The rail removed was 60-pound flat rail and was worn out.

37. Graham avenue, from Driggs avenue to Broadway.

8,226 feet double track, making 15,754 feet single track 9-inch 98½-pound rail. In connection are 4 pieces of special work consisting of 4 tongue switches, 4 mates, 60 frogs and 698 feet of curved track. Age of rail is 1 year. Life of rail, 8 years.

38. Meeker avenue, from Newtown creek to Humboldt street; on Humboldt street to Grand avenue.

7,732 feet double track, consisting of 14,446 feet flat 60-pound rail, 374 feet 9-inch 94-pound rail. Age of flat rail, 10 years; age of 9-inch rail, 1 year. In connection is special work of flat 60-pound rail, 4 tongue switches, 4 mates, 4 frogs and 212 feet of track. Also special work consisting of 9-inch rail, 2 tongue switches, 2 mates, 22 frogs and 432 feet of curved track.

39. South Fourth street, from Bedford avenue to Union avenue; Meserole avenue, from Union avenue to Bushwick avenue; Bushwick avenue, from Meserole avenue to Myrtle avenue.

11,904 feet of double track. Of this 22,319 feet single track is 9-inch 94-pound rail. In connection are 2 crossovers and 2 pieces of special work consisting of 4 tongue switches, 4 mates, 12 frogs and 1,489 feet curved track. Age of rail, 1 / 7 2 years, 6 / 7 1 year.

40. Grand street, from Kent avenue to Maspeth.

21,207 feet double track. Of this 40,112 feet single track is 9-inch girder special work, 19 tongue switches, 19 mates, 95 frogs, 2,113 feet curved track; also flat 60-pound special work consisting of 8
352 tongue switches, 8 mates, 32 frogs, 190 feet flat rail; also 3 crossovers. Age of rail, 1 / 10 3 years, 2 / 10 1 year and balance laid in 1899. The portion in Queens borough is 8,479 feet double track.

41. Knickerbocker avenue, from Flushing avenue to Myrtle avenue.

3,650 feet double track, consisting of 6,937 feet single track, 9-inch 94-pound rail and 363 feet curved rail in special work. Age of rail, 1 year.

42. Fresh Pond road, from Flushing avenue to Lutheran Cemetery railroad.

6,130 feet double track, consisting of 11,913 feet single track Lewis & Fowler 66-pound rail and 1 piece of special work with 16 frogs and 347 feet curved track and 1 crossover. Age of rail, 8 years.

43. Cypress Hills line, from Myrtle avenue to Cypress Hills cemetery, including Willow street, from Wyckoff avenue to Cypress avenue.

6,975 feet double track, consisting of 9,232 feet single track 9-inch 90-pound rail, 4,388 feet flat 60-pound rail, 1 crossover and special work, 3 tongue switches, 3 mates, 11 frogs and 339 feet curved rail. 9-inch rail was laid in 1899; flat rail about 1890. This is all in Queens borough.

44. Flushing extension, from Maspeth on Grand street, Broadway, Union avenue, Grand avenue, Corona avenue, Ireland Mill road, Lawrence avenue, Bradford avenue, Jagger avenue, Prospect avenue; also from Grand avenue on Junction avenue, Poor Bowery road, Old road, Maple avenue to Bowery bay.

42,090 feet double track consisting of 17,013 feet 9 inch 94 pound rail, 16,501 feet T rail, single track, 47,930 feet Lewis & Fowler 60 pound single track, 137 feet flat rail. In connection are 948
353 feet single track sidings, of which 568 feet is Lewis & Fowler and 215 feet T rail, with 4 tongue switches, 4 mates, 4 frogs and 165 feet of curved track. In connection are 8 cross-overs and special work consisting of 4 tongue switches, 4 mates, 8 frogs and 2,600 feet of curved track. Age of rail, $\frac{3}{4}$ of the 9 inch girder rail is 3 years, $\frac{1}{4}$ of the 9 inch girder rail is 1 year, Lewis & Fowler rail is 6 years, T rail, 3 years. This is all in Queens borough.

45. Johnson street from Fulton street to Washington street.

75 feet double track.

Twenty-fifth street from Third avenue to Fifth avenue.

850 feet double track.

Wyckoff avenue from Halsey street to Myrtle avenue.

1,068 feet double track. This is all in Queens borough.

Alabama avenue from Fulton street to Atlantic avenue.

279 feet double track.

All 9 inch girder rail, except Twenty-fifth street, which is Lewis & Fowler 66 pound rail.

46. Joralemon street.

1,371 feet double track, 9 inch girder.

Sackett street.

375 feet double track, 9 inch girder.

In connection are 149.67 miles trolley wire.

In connection are 24.27 miles trolley wire under L roads.

In connection are 309.4 miles feeder wire.

In connection are 6,268 iron poles.

All in Kings county.

In connection are 37.36 miles trolley wire.

In connection are 36.8 miles feeder wire.

In connection are 1,715 iron poles.

In connection are 6 wood poles.

All in Queens county.

354 III.—*Tangible Real Property Owned by the Brooklyn, Queens County and Suburban Railroad Company, Possessed and Operated by the Brooklyn Heights Railroad Company, Lessee.*

1. North Second street and Metropolitan avenue, from Kent avenue to St. John's cemetery (including Dry Harbor road).

26,532 feet double track. In this is included 53,064 feet single track of which 51,143 feet is 9 inch 90 and 94 pound girder rail and 572 feet is flat 47 pound rail, with 140 feet of sidings. In connection are 6 crossovers and special work consisting of 3 tongue switches, 3 mates, 3 frogs and 1,270 feet curved 9 inch rail and 79 feet curved

flat rail. Age of rail, 3/10 5 years, 7/10 is 1 year. The portion in Queens borough is 14,730 feet double track.

2. Broadway, from the East river to Jamaica avenue.

22,720 feet of double track. Of this 43,557 feet single track is 9-inch 90 pound girder rail, with 400 feet of sidings, consisting of 250 feet of 9-inch rail, 12 tongue switches, 12 mates, 16 frogs, 150 feet curved rail. In connection are 8 crossovers and 15 pieces of special work, consisting of 42 tongue switches, 40 mates 1 6/8 frogs, 2,089 feet curved 9-inch rails. Age of rail 1/5 6 years, 19/25 5 years, 1/25 2 years.

3. Atlantic avenue, from Alabama avenue to Georgia avenue; Georgia avenue, from Atlantic avenue to Jamaica avenue; Fulton street, from Alabama avenue to Crescent avenue; Crescent avenue, from Fulton street to Jam-ica avenue.

10,841 feet double track, making 20,961 feet single track, 9-inch 94-pound rail. In connection are 1 crossover and special work consisting of 4-ton switches, 4 mates, 16 frogs and 721 feet curved 9-inch rail. Age of rail, ½ three years, ½ two years.

355 4. Sumner avenue, from Broadway to Fulton street; Troy avenue, from Fulton street to Bergen street.

9,525 feet of double track, of which 18,356 feet of single track is 9-inch 90-pound rail. In connection are 3 crossovers and 694 feet 9-inch curved rail in special work. Age of rail 5 years.

5. Reid avenue, from Broadway to Fulton street; Utica avenue, from Fulton street to Carroll street.

10,553 feet double track, of which 20,464 feet single track is 9-inch 90-pound girder rail. In connection are 4 crossovers and special work consisting of 1 ton switch, 1 mate, 1 frog and 632 feet curved 9-inch rail. Age of rail, 13/20, 5 years; 7/20, 2 years.

6. Ralph avenue, from Broadway to Douglass street.

7,559 feet double track, of which 14,616 feet single track is 9-inch 90-pound rail. In connection is special work consisting of 5 ton switches, 5 mates, 5 frogs and 502 feet curved special work and 3 crossovers. Age of rail, 5/7 is five years and 2/7 two years.

In connection are 15.69 miles trolley wire, county of Kings.

In connection are 36.2 miles feeder wire, county of Kings.

In connection are 715 poles, county of Kings.

In connection are 4.7 miles trolley wire, county of Queens.

In connection are 21.1 miles feeder wire, county of Queens.

In connection are 168 iron poles, county of Queens.

IV.—*Tangible and Real Property Owned by the Nassau Electric Railroad Company, Lessor, and Possessed and Operated by the Brooklyn Heights Railroad Company, Lessee, All in the Borough of Brooklyn.*

356 1. South Eighth street, from Wythe avenue to Broadway.

2,115 feet double track, of which 3,705 feet single track is 9-inch 90-pound rail. In connection are 5 tongue switches, 5 mates, 45 frogs, 1 crossover, 525 curved 9-inch single track. Age of rail is 5 years.

2. Marcy avenue, from North Second street to Fulton street.

13,510 feet double track, of which 26,270 feet single track is 9-inch 90-pound girder rail. In connection is special work, 12 tongue switches, 12 mates, 198 frogs, 750 feet curved 9-inch single track and 3 crossovers. Age of rail is 5 years.

3. South Fifth street, from Marcy avenue to Union avenue; Johnson and Morgan avenues, from Union avenue to Hamburg avenue; Hamburg avenue to Cooper avenue, Cooper avenue to Broadway.

22,413 feet double track, of which 39,472 feet single track is 9-inch 90-pound girder rail. In connection is special work consisting of 11 tongue switches, 11 mates, 177 frogs, 1,030 feet curved 9-inch single track and 2 crossovers. Age of rail, 5 years.

4. From Park avenue and Washington, on Park to Beaver, on Beaver to Bushwick, from Bushwick on Jefferson to Central, on Central to Chauncey street.

18,953 feet double track, making 35,536 feet single track, of which ½ is 6-inch 66-pound rail and ½ of 9-inch 90-pound rail. In connection is special work consisting of 24-ton switches, 24 mates, 282 frogs and 2,370 feet curved single track, ½ 6 and ½ 9-inch rail, and 1 crossover.

5. On Vanderbilt from Park, on Vanderbilt to Ninth avenue, on Ninth avenue to Ninth street, and from Fifteenth street to Greenwood cemetery.

357 13,371 feet double track, making 23,777 feet single track, of which ¾ is 9-inch girder rail and ¼ 6-inch 70-pound rail. In connection are sidings and special work consisting of 5 crossovers, 28 ton switches, 28 mates, 140 frogs, 2,965 feet curved single track. Age of rail is 5 years.

6. On Front street from Main to Adams, on Adams to Fulton, on Boerum place to Bergen street, from Bergen street to Buffalo avenue, on Buffalo avenue to Douglass avenue.

26,780 feet double track, making 51,585 feet single track, of which ½ is 9-inch 90-pound girder rail and ½ 6-inch 70-pound rail. In connection is special work consisting of 25 ton switches, 25 mates, 268 frogs, 5 crossovers and 1,975 9-inch 90-pound curved track. Age of rail is 5 years.

7. From Washington avenue on Concord street to Navy street, on Navy street to Park avenue.

2,970 feet double track, of which 5,315 feet single track is 9-inch 90-pound rail. In connection are sidings and special work consisting of 1 crossover, 16 switches, 16 mates, 82 frogs, 830 feet curved 9-inch girder rail and 680 feet straight single-track 9-inch rail. Age of rail is 5 years.

8. Atlantic avenue, from East river to Washington avenue, on Washington avenue to Sterling place, on Sterling place to Rogers avenue.

16,344 feet double track, of which 30,963 feet single track is 9-inch girder rail. In connection are 5 crossovers, 600 feet straight siding,

6-inch 60 pounds, 37 ton switches, 37 mates, 193 frogs, 1,725 feet curved 9-inch girder rail, single track. Age of rail is 7 years.

9. Hicks street, from Atlantic avenue to Hamilton avenue.

358 4,450 feet double track, of which 8,750 feet single track is stringer in 60 pounds to the yard. In connection are 4 ton switches, 4 mates, 12 frogs, 1 crossover, and 150 feet curved stringer single track. Age of rail is 10 years.

10. Sackett street, from Columbia to Hoyt; Hoyt from Sackett to Bergen.

4,546 feet double track, of which 8,662 feet single track is 6-inch 70-pound girder rail. In connection are 6 ton switches, 6 mates, 74 frogs, 730 curved 6-inch 70-pound rail and 1 crossover. Age of rail is 8 years.

11. Fifteenth street, from Hamilton avenue to Ninth avenue.

5,991 feet double track, of which 11,832 feet single track is 6-inch 70-pound girder rail. In connection are 6-ton switches, 2 mates, 38 frogs, 150 feet curved 6-inch 70-pound girder rail and 1 crossover. Age of rail 8 years.

12. Seventh avenue, from Flatbush avenue to Twentieth street; Twentieth street, from Seventh avenue to Ninth avenue.

9,050 feet double track, of which 17,650 feet single track is curved 9-inch girder 90-pound rail, and ½ is 6-inch girder 70-pound rail. In connection there are sidings and special work consisting of 40 feet of straight track, 975 feet curved single track, 35 frogs, 11 mates and 13 ton switches and 3 crossovers. Age of rail, one-half 3 years, one-half 6 years.

13. Fifth avenue, from Atlantic avenue to Fort Hamilton with spur on Twenty-third and Twenty-fourth streets.

29,880 feet double track, of which 57,360 feet single track is one-half 9-inch 90-pound girder rail, and one-half is 6-inch 60-pound rail. In connection are sidings and special work consisting of 1,230 feet straight single track, 5,325 feet curved single track, one-half

359 9-inch and one-half 6-inch, 8 crossovers, 79 ton switches, 79 mates and 283 frogs. Age of 9-inch rail is 3 years, age of 6-inch rail 8 years.

14. Eighty-sixth street, from Fifth avenue to Thirteenth avenue; Fourteenth avenue, from Eighty-sixth street to Bath avenue; Bath avenue, from Fourteenth avenue to Bay Thirty-fifth street, with spur on Bay Nineteenth street.

14,230 feet double track, of which 27,585 feet single track is 9-inch 90-pound girder rail. In connection are 7 ton switches, 7 mates, 46 frogs, 875 feet curved 9-inch single track. Age of rail is 4 years.

15. From Thirty-ninth street and Third avenue, on Thirty-ninth street to Thirteenth avenue, on Thirteenth avenue to Thirty-seventh street, on Thirty-seventh street to Fourteenth avenue.

8,760 feet double track, of which 16,195 feet single track is 9-inch 90-pound girder rail. In connection are sidings and special work of 9-inch girder rail consisting of 140 feet straight sidings, 1,625

feet curved single track, 1 crossover, 28 switches, 28 mates, 140 frogs. Age of rail 3 years.

15½. New Utrecht avenue, from Thirty-ninth street to Eighty-first street, 12,600 feet double track, 56 pound T rail, very old.

16. Church avenue, from Thirty-sixth street to Rockaway avenue, 22,811 feet double track, of which 44,467 feet single track is 9-inch 90-pound girder rail. In connection are sidings consisting of T rail 50 pounds to the yard, 575 feet straight siding and 575 feet curved siding, with 10 frogs, 10 switches and 10 mates. Also special work consisting of 1 crossover, 1,155 feet curved 9-inch single track, 15 ton switches, 11 mates, 97 frogs. Age of rail is 5 years.

360 17. Rogers avenue, from Bergen street and Avenue F to Ocean avenue, to Emmons avenue.

35,600 feet double track, of which 69,975 feet single track is 9-inch 90-pound girder rail. In connection is special work, consisting of 16 ton switches, 12 mates, 112 frogs, 1,225 feet curved 9-inch single track and 4 crossovers. Age of rail is 5 years; life of rail 8 years.

18. Douglass street, from Rogers avenue to New York avenue; New York avenue, from Rogers avenue to Liberty avenue; Liberty avenue, from New York avenue to Enfield street.

24,822 feet double track, of which 48,634 feet single track is 9-inch 90-pound girder rail. In connection is special work, consisting of 1,010 feet curved 9-inch single track, 3 crossovers, 137 frogs, 25 mates, 25 ton switches. Life of rail is 8 years; age of rail 5 years.

19. Rockaway avenue, from Broadway to Canarsie.

21,330 — of double track, making 41,295 feet single track 9-inch girder rail, 90 pounds. In connection are sidings and special work, consisting of 160 feet straight track, 1,940 — curved 9-inch single track, 25 ton switches, 25 mates and 165 frogs. Age of rail is 4 years; life of rail 8 years.

Map hereto attached shows the various lines above described.

In connection are 111.14 miles trolley wire.

In connection are 223 miles feeder wire.

In connection are 5,532 iron poles.

In connection are 118 wood poles.

V.—*Tangible Real Property Owned by the Coney Island and Gravesend Railroad Company and Possessed and Operated by the Brooklyn Heights Railroad Company, Lessee, All in the Borough of Brooklyn.*

1. From intersection of Ocean avenue and Emmons avenue
361 on Emmons avenue to Coney Island plank road, on Coney Island plank road to West Sixth street, on West Sixth street to Neptune avenue, on Neptune avenue to West Eighth street, on West Eighth street to Surf avenue, on Surf avenue to West Thirty-fifth street.

14,300 feet double track, of which 27,600 feet single track is 9-inch 90-pound girder rail. In connection is special work consisting of 1,000 feet curved 9-inch single track, 12 tongue switches, 4 mates,

99 frogs and 3 crossovers. Age of rail is 2 years. Life of rail is 8 years.

The map hereto annexed shows the various streets and avenues upon which this road is constructed.

In connection are 5.38 miles trolley wire.

In connection are 4.4 miles feeder wire.

In connection are 271 iron poles.

VI. The Prospect Park and Coney Island Railroad Company is a steam railroad company owning its own roadbed and right of way, and according to the present information of its officers, it has no special franchise.

VII. The New York and Coney Island Railroad Company is a steam railroad company owning its own roadbed and right of way, such streets or highways as now cross it having been laid out, according to the present information of its officers, over the lands of the railroad company, so that this company has no special franchise.

VIII. The Prospect Park and South Brooklyn Railroad Company is also a steam railroad company owning its own right of way, and, according to the present information of its officers, it has no special franchise.

IX. The Sea Beach Railway Company is a steam railroad company owning its own roadbed and right of way, and, according to the present information of its officers, it has no special franchise.

362 X. The Sea View Railroad Company is a steam railroad corporation owning its own roadbed and right of way, and, according to the present information of its officers, it has no special franchise.

SCHEDULE C.

The Brooklyn Heights Railroad Company, the Nassau Electric Railroad Company, the Coney Island and Brooklyn Railroad Company and the Brooklyn City and Newtown Railroad Company all have separate contracts with the trustees of the New York and Brooklyn bridge, authorizing them, at their own expense, to make the necessary construction work for crossing on the roadways of the bridge. These companies also have contracts with each other for such construction work and with reference to such crossing. All such construction work on the bridge becomes at once upon its construction the property of the bridge authorities. Such contracts were made in pursuance of the special law, chapter 663 of the Laws of 1897, a copy of which is hereto annexed. By virtue of such contracts these railroad companies have laid rails and made the necessary construction and equipment for crossing on the roadways of the bridge, and are operating thereon accordingly.

Brooklyn Union Elevated Railroad Company and Kings County Elevated Railroad Company also have separate contracts with the bridge authorities by authority of the same special law for crossing over the former railroads of the bridge. All construction work

erected on bridge property by each company becomes the property of the bridge authorities as soon as placed upon bridge property. By virtue of such contracts both these elevated railroad companies have the right to operate across the bridge, and the Brooklyn Heights Railroad Company, as lessee of Brooklyn Union Elevated Railroad Company, operates over the bridge as such lessee.

363 Copy of special law, grant, ordinance, or contract, or reference to general law under which "special franchise is held, possessed, or enjoyed, and statement of any condition, obligation, or burden imposed upon such special franchise or under which the same is enjoyed."

The special franchise of the Brooklyn Heights Railroad Company for the routes owned and operated by it on the following streets are held, possessed and enjoyed under the general law, chap. 282 of the Laws of 1884, and chaps. 65 and 642 of the Laws of 1886 and the acts amendatory thereof and supplementary thereto.

Montague street, from the terminus at or near Court street to the westerly end of Montague street, at or near Montague terrace.

State street from Furman street to its power-house on State street.

Copy of special law, grant, ordinance, or contract, or reference to general law under which "special franchise is held, possessed, or enjoyed, and statement of any condition, obligation, or burden imposed upon such special franchise or under which the same is enjoyed."

The special franchise possessed or enjoyed by the Brooklyn Heights Railroad Company, as lessee of the Brooklyn City Railroad Company, in the following streets, all of which are shown on the map herewith presented, is held, possessed or enjoyed under the general and special laws respectively referred to as follows, copies of all of the said special laws being hereto annexed in the order of their enactment:

I.—*The Original Lines of the Brooklyn City Railroad Company Originally Constructed and Owned by it.*

Fulton street, from Fulton ferry to Broadway.

364 Furman street, from Fulton ferry to Atlantic avenue.

Columbia street, from Atlantic avenue to Hamilton avenue.

Hamilton avenue, from Hamilton ferry to Court street.

Court street, from Fulton street to Hamilton avenue.

Flatbush avenue, from Fulton street to Malbone street.

Third avenue, from Flatbush avenue to Sixtieth street.

Myrtle avenue, from Fulton street to Broadway.

Sands street, from Fulton street to Hudson avenue.

Hudson avenue, from Sands street to Nassau street.

Nassau street, from Hudson avenue to Navy street.

Flushing avenue, from Navy street to Broadway.

Classon avenue, from Myrtle avenue to Kent avenue.

Kent avenue, from Classon avenue to Division avenue.
Sackett street, from Columbia street to ferry.
General law, chap. 140, Laws 1850, and the general laws amendatory thereof and supplementary thereto.
Special law, chap. 77, Laws 1854.

II.—*Extensions of Original Lines of the Brooklyn City Railroad Company Originally Owned by it, the Special Franchise for which is Possessed or Enjoyed under General Laws, chap. 140 of the Laws of 1850, chap. 252 of the Laws of 1884, chap. 565 of the Laws of 1890, and the General Railroad Laws Amendatory Thereof and Supplementary Thereto.*

Fulton Street extension.

Alabama avenue from Broadway to Atlantic avenue.

365 Bergen Beach extension.

Flatbush avenue, from Malbone street to Avenue N.
Avenue N, from Flatbush avenue to Avenue U.
Avenue U, from Avenue N to East Seventy-sixth street.
East Seventy-sixth street, from Avenue U to Avenue X.
Avenue X, from East Seventy-sixth street to Bergen beach.

Avenue C extension.

Avenue C, from Flatbush avenue to Coney Island avenue.
Varick street, from Nassau avenue to Meeker avenue.
South Ninth street, from Kent avenue to Marcy avenue.
Rodney street, from Broadway to South Second street.
South Second street, from Rodney street to Union avenue.
Stagg street, from Union avenue to Morgan avenue.
Johnson avenue, from Union avenue to Broadway.
Central avenue, from Flushing avenue to Jefferson street.
Melrose street, from Broadway to Flushing avenue.
Bushwick avenue, from North Second street to Meserole street.
Morrell street, from Bushwick avenue to Flushing avenue.
Beaver street, from Flushing avenue to Ellery street.
Ellery street, from Beaver street to Broadway.
Lewis avenue, from Broadway to Fulton street.
Bainbridge street, from Sumner avenue to Broadway.
Raymond street, from Willoughby street to Fulton street.
Howard avenue, from Broadway to Fulton street.
366 Malbone street, from Nostrand avenue to East New York avenue.
East New York avenue, from Malbone street to East New York.
Forty-ninth street, from Third avenue to Eighth avenue.
Division avenue, from Roebling street to Kent avenue.
Wilson street, from Division avenue to Kent avenue.
Clymer street, from Washington avenue to Division avenue.
Wallabout street, from Classon avenue to Rutledge street.
Rutledge street, from Wallabout street to Broadway.

Morgan avenue, from Johnson avenue to Stagg street.
Jefferson street, from Broadway to Central avenue.
Waterbury street, from Grand street to Johnson avenue.
Kingsland avenue, from Paidge avenue to Maspeth avenue.
Maspeth avenue, from Kingsland avenue to Bushwick avenue.
Paidge avenue, from Oakland street to Kingsland avenue.
Fresh Pond road, from Jamaica avenue to Lutheran Cemetery railroad, Queens borough.
Rockaway parkway, from Avenue E to Avenue F.
Flatbush avenue, from Kings highway to Avenue V.
Avenue N, from East Ninety-third street to Remsen avenue.
Betts avenue, from Shell road to Greenpoint avenue, Queens borough.
Laurel Hill boulevard, from Newtown creek to and into the old Astoria road to Thompson avenue, Queens borough.
Fresh Pond road, from Brooklyn City line to Grand street, Queens borough.
Grand avenue, from Union avenue to Summit avenue, Queens borough.
367 Hoffman boulevard, from Jamaica road to boundary line between Newtown and Jamaica, L. I., Queens borough.
Shell road, from Laurel Hill boulevard to Broadway, Queens borough.
Thompson avenue, from boundary line between Long Island City and Newtown to Jamaica road, Queens borough.
Trotting Course lane and the continuations thereof, from Jamaica road to the line dividing Newtown from Jamaica, L. I., Queens borough.
Union avenue, from Broadway to Grand avenue, Queens borough.
Newton avenue, from Union avenue to Corona avenue, Queens borough.
Flushing and Newtown road, from Broadway, Newtown village to Junction avenue, Queens borough.
Broadway, from Long Island railroad crossing to Flushing, Queens borough.
Summit avenue, from Grand avenue to Flushing and Newtown road, Queens borough.
Flushing and Newtown road to Jackson avenue, Queens borough.
Rockaway parkway, from Avenue E to Avenue F.
East Ninety-third street, from Avenue N to Jamaica bay.
Nostrand avenue, from line dividing the towns of Flatbush and Flatlands to the boundary of Flatlands and Gravesend.
Flatlands avenue, from Remsen avenue to boundary line between Flatlands and Gravesend.
Kings highway, from Flatbush avenue to boundary line of Flatlands and Gravesend.
Avenue C, from the town line dividing the town of Flatbush from the town of Flatlands to Remsen avenue.

Remsen avenue, from the town line dividing the town of Flatbush from the town of Flatlands to Avenue N.

368 Nostrand avenue, from Malbone street to boundary line of Flatbush and Flatlands.

Vernon avenue, from Flatbush avenue to East Thirty-seventh street.

Avenue C from Coney Island avenue to the boundary line of Flatbush and Flatlands.

Avenue E, from Fortieth street to Coney Island road.

Fortieth street, from Sixteenth avenue to Avenue E.

Sixteenth avenue, from the boundary line of Flatbush and New Utrecht to Fortieth street.

Coney Island road, from Avenue E to Avenue C.

Metropolitan avenue, from Fresh Pond road to Jassmine street, Queens borough.

Jassmine street, from Metropolitan avenue to Vienna avenue, Queens borough.

Vienna avenue, from Jassmine street to Fresh Pond road, Queens borough.

Second avenue, from Sixty-fifth street to Sixty-sixth street.

Sixty-sixth street, from Second avenue to First avenue.

First avenue, from Sixty-sixth street to Marine avenue.

Marine avenue, from First avenue to Third avenue, conditionally.

Third Avenue extension.

Third avenue, from Sixtieth street to Ninety-ninth street.

Ninety-ninth street, from Third avenue to Fifth avenue.

Fifth avenue, from Ninety-ninth street to One Hundred and first street.

Ulmer Park extension.

Bay Ridge avenue, from Third avenue to Thirteenth avenue.

Thirteenth avenue, from Bay Ridge avenue to Eighty-sixth street.

369 Eighty-sixth street, from Thirteenth avenue to Twenty-fifth avenue.

Twenty-fifth avenue, from Eighty-sixth street to Ulmer park.

Twenty-fifth Street extension.

Twenty-fifth street, from Third avenue to Fifth avenue.

Kent Avenue extension.

Kent avenue, from Division avenue to Franklin street.

Franklin street, from Kent avenue to Commercial street.

Commercial street, from Franklin street to Manhattan avenue.

Flushing Avenue extension.

Flushing avenue, from Broadway to Bushwick avenue.
Flushing avenue, from Knickerbocker avenue to Grand street.
Union avenue, Grand avenue and Junction avenue from the Flushing and North Side Railroad track in Newtown to the village of Flushing and to Bowery Bay by various streets, as shown upon the annexed map, Queens borough.
Fresh Pond road, from Flushing avenue to Lutheran Cemetery railroad, as shown on annexed map, Queens borough.
Knickerbocker avenue, from Flushing avenue to Myrtle avenue.

Myrtle Avenue extension.

From Broadway to the Jamaica Road junction at Clarenceville as shown on annexed map, easterly from Ridgewood, is in Queens borough.

370 Rockwell place, from Willoughby street to Fulton street.
Nostrand avenue, from Malbone street to Flatbush avenue.
Vernon avenue, from Nostrand avenue to Old Clove road.
Old Clove road, from Church avenue to Love lane.
Graham avenue, from Driggs avenue to Flushing avenue.
Nassau avenue, from Manhattan avenue to Meeker avenue.
Throop avenue, from Park avenue to Floyd street.
Greene avenue, from Fulton street to Franklin avenue.
Franklin avenue, from Greene avenue to Gates avenue.
Gates avenue, from Franklin avenue to Broadway.
Halsey street, from Broadway to Irving avenue.
Wyckoff avenue, from Halsey street to Myrtle avenue.
Willow street, from Wyckoff avenue to Cypress avenue.

III.—*Extensions of Lines of the Brooklyn City Railroad Company Originally Owned by it, the Special Franchise for which is Possessed or Enjoyed under Special Laws as Respectively Set Forth Below and Copies of which are Hereto Annexed.*

Putnam avenue, from Fulton street to Nostrand avenue.
Halsey street, from Nostrand avenue to Broadway.

Special Law, ch. 171, L. 1872.

IV.—*The following lines were originally owned by other companies, the property rights, franchises and privileges of which were acquired by the Brooklyn City Railroad Company by lease and merger under the general railroad law, ch.* 140 *of the Laws of* 1850, *and the general laws amendatory thereof and supplementary thereto.*

371 Lines formerly of the Brooklyn Crosstown Railroad Company.

Vernon avenue, from Borden street to and across Newtown creek, Queens borough.
Manhattan avenue, from Newtown creek to Driggs avenue.
Driggs avenue, from Union avenue to Broadway.

Bedford avenue, from Manhattan avenue to Broadway.
Washington avenue, from Kent avenue to Myrtle avenue. (Built by Brooklyn City Railroad Company under L. 1866, ch. 823, sec. 4.)
Park avenue, from Washington avenue to Navy street.
Raymond street, from Park avenue to Willoughby street.
Navy street, from Park avenue to Willoughby street.
Willoughby street, from Navy street to Fulton street.
Joralemon street, from Fulton street to Court street.
Richards street, from Hamilton avenue to Erie basin.
All as shown on map hereto annexed.

The special law, chap. 323 of the Laws of 1864 authorized the incorporation of the Greenpoint and Williamsburgh Railroad Company and granted to it as therein specified its franchises for a portion of the above-named streets.

The special law, chap. 823 of the Laws of 1866, confirmed the incorporation of the Nassau Railroad Company and granted to it as therein specified its franchise for portions of the above-named streets, and also granted to Brooklyn City Railroad Company right to build on Washington avenue as above.

372 The special law, chap. 576 of the Laws of 1868, authorized the consolidation of these two companies, and in pursuance thereof they were duly consolidated into the Brooklyn City, Hunter's Point and Prospect Park Railroad Company, which was incorporated in pursuance of the general law, chap. 140 of the Laws of 1850, and its name was afterwards changed to the Brooklyn Crosstown Railroad Company by the special law, chap. 453 of the Laws of 1872, which was granted its franchise on Richards street as above specified by the special law, chap. 574 of the Laws of 1874, and the last-named company was leased to and merged with the Brooklyn City Railroad Company by proceedings taken in pursuance of the general law, chap. 24 of the Laws of 1867, as amended by the general law, chap. 503 of the Laws of 1879.

Lines formerly of the Williamsburgh and Flatbush Railroad Company.

Driggs avenue, from Broadway to Division avenue.
Division avenue, from Driggs avenue to Lee avenue.
Lee avenue, from Division avenue to Nostrand avenue.
Nostrand avenue, from Lee avenue to Malbone street.

The special law, chap. 771 of the Laws of 1866, granted to the Williamsburgh & Flatbush Railroad Company franchises for the above-named streets.

Its property and franchises were sold afterwards at foreclosure to the New Williamsburgh & Flatbush Railroad Company, which was leased to and merged with the Brooklyn City Railroad Company in pursuance of the general law, chap. 24 of the Laws of 1867, as amended by the general law, chap. 503 of the Laws of 1879.

373 Malbone street, from Nostrand avenue to Flatbush avenue.

Constructed under general laws, chap. 140 of the Laws of 1850 and the acts amendatory thereof.

Lines formerly of the South Brooklyn Street Railroad Company.

Thirty-ninth street, from Third avenue to Second avenue.
Second avenue, from Thirty-ninth street to Sixty-fifth street.
Sixty-fifth street, from Second avenue to Third avenue.
Fifty-second street, from Second avenue to New York bay.
Fifty-eighth street, from Second avenue to Third avenue.

The South Brooklyn Street Railroad Company acquired a franchise from the above lines and constructed the same under the general law, chap. 140 of the Laws of 1850, and the general law, chap. 252 of the Laws of 1884, and the general laws amendatory thereof and supplementary thereto, and all its property rights, privileges and franchises were leased to and merged with the Brooklyn City Railroad Company by proceedings taken in pursuance of the general law, chap. 24 of the Laws of 1867, as amended by the general law, chap. 503 of the Laws of 1879.

Lines formerly of the Bushwick Railroad Company.

South Fourth street, from Bedford avenue to Utica avenue.
Meserole street, from Union avenue to Bushwick avenue.
Bushwick avenue, from Meserole street to Myrtle avenue.
Roebling street, from Broadway to Division avenue.
374 Division avenue, from Roebling street to Harrison avenue.
Harrison avenue, from Division avenue to Flushing avenue.
Tompkins avenue, from Flushing avenue to Fulton street.
Kingston avenue, from Fulton street to Douglass street.
Flushing avenue, from Bushwick avenue to Knickerbocker avenue.
Cypress avenue, from Myrtle avenue to Cypress Hills cemetery. Easterly from Ridgewood this line is in Queens borough.

The Bushwick railroad acquired its franchises for the above-named streets under the general law, chap. 140 of the Laws of 1850, and the general laws amendatory thereof and supplementary thereto, which was afterward leased to and merged with the Brooklyn City Railroad Company under the provisions of the general laws, chap. 24 of the Laws of 1867, as amended by chap. 503 of the Laws of 1879, as supplemented by the special law, chap. 310 of the Laws of 1890.

Lines formerly of the Calvary Cemetery, Greenpoint and Brooklyn Railroad Company.

Greenpoint avenue, from the East river to Calvary cemetery.
Oakland street, from Driggs avenue to Box street.
Union avenue, from Driggs avenue to Broadway.
Throop avenue, from Broadway to Park avenue.

The Calvary Cemetery, Greenpoint and Brooklyn Railroad Company acquired its franchises for the above-named streets under the general laws, chap. 140 of the Laws of 1850, chap. 252 of the Laws of 1884, and the general laws amendatory thereof and supplementary thereto.

375 This corporation was afterward leased to and merged with the Brooklyn City Railroad Company under the general laws above cited.

Lines formerly of the Grand Street and Newtown Railroad Company.

Grand street, from Grand Street ferry through Maspeth to the crossing of the Flushing and North Side Railroad Company in Newtown.

Humboldt street, from Grand street to Meeker avenue.

Meeker avenue, from Humboldt street to Newtown creek.

The special laws, chap. 462 of the Laws of 1860, chap. 199 of the Laws of 1862, and chap. 746 of the Laws of 1870, granted to the Grand Street and Newtown Railroad Company franchises for the lines above mentioned, among others.

The Grand Street and Newtown Railroad Company was subsequently leased to and merged with the Brooklyn City Railroad Company pursuant to general laws, chap. 240 of the Laws of 1867 and chap. 503 of the Laws of 1879.

Lines formerly of the Greenpoint and Lorimer Street Railroad Company.

Meserole avenue, from Franklin street to Manhattan avenue.

Nassau avenue, from Manhattan avenue to Lorimer street.

Lorimer street, from Nassau avenue to Broadway.

Gwinnett street, from Broadway to Nostrand avenue.

The Greenpoint and Lorimer Street Railroad Company was incorporated under general law, chap. 252 of the Laws of 1884 and the acts amendatory thereof and supplementary thereto, and
376 after the construction of the lines above named was leased to and merged with the Brooklyn City Railroad Company under the general laws above cited.

(The following special acts, which were introduced in evidence upon this trial, and abstracts of which are attached to the evidence herein designated by the exhibit numbers designated below, were attached to this report in full:)

Laws 1854, chap. 77, Exhibit 21 C.
Laws 1860, chap. 462, Exhibit 47 C.
Laws 1862, chap. 199, Exhibit 48 C.
Laws 1864, chap. 323, Exhibit 52 C.
Laws 1866, chap. 771, Exhibit 1 C.
Laws 1866, chap. 823, Exhibit 2 C.
Laws 1870, chap. 746, Exhibit 49 C.
Laws 1872, chap. 171, Exhibit 27 C.
Laws 1874, chap. 574, Exhibit 53 C.

III.—*As to Special Franchise of the Brooklyn, Queens County and Suburban Railroad Company.*

Lines originally owned by the Broadway Railroad Company.

Broadway, from Broadway ferry to Fulton street.
Atlantic avenue, from Alabama avenue to Georgia avenue.
Georgia avenue, from Atlantic avenue to Jamaica avenue.

The special law, chap. 303 of the Laws of 1858, a copy of which is hereto annexed, granted to the Broadway Railroad Company its franchise for the above named streets.

Fulton street, from Alabama avenue to Crescent street.
Crescent street, from Fulton street to Jamaica avenue.
Sumner avenue, from Broadway to Fulton street.

377 The special law, chap. 461 of the Laws of 1860, of which a copy is hereto annexed, granted to the Broadway Railroad Company its franchises for the above-named streets.

Reid avenue, from Broadway to Fulton street.

The special law, chap. 788 of the Laws of 1873, granted the franchise for this street to the Broadway Railroad Company.

The Broadway Railroad Company, by general laws, chap. 140 of the Laws of 1850 and the acts amendatory thereof and supplemental thereto, acquired its franchise for the following streets prior to the year 1884:

Ralph avenue, from Broadway to Pacific street.
Reid avenue, from Broadway to Fulton street.
Utica avenue, from Fulton to Carroll street.
Sumner avenue, from Broadway to Fulton street.
Troy avenue, from Fulton street to Bergen street.

Lines originally owned by the North Second Street and Middle Village Railroad Company.

Metropolitan avenue, from Kent avenue to St. John's cemetery.

Of the above the line on Metropolitan avenue, from Kent avenue to Grand street, was originally owned and constructed by the North Second Street and Middle Village Railroad Company under general laws, chap. 140 of the Laws of 1850 and the acts amendatory thereof and supplemental thereto.

The special law, chap. 746 of the Laws of 1870, granted to the Grand Street and Newtown Railroad Company the franchise for that portion of Metropolitan avenue between Grand street and Lutheran cemetery, a copy of which special law is hereto annexed.

378 The North Second Street and Middle Village Railroad Company acquired this line from the Grand Street and Newtown Railroad Company and the franchises therefor.

The line from Lutheran cemetery to Dry Harbor road was constructed by the North Second Street and Middle Village Railroad Company under the General Laws of 1850, chap. 140, and the acts amendatory thereof and supplemental thereto.

Under and in pursuance of general laws, Laws of 1850, chap. 140 and the several acts amendatory thereof and supplemental thereto, the Broadway Railroad Company and North Second Street and Middle Village Railroad Company were consolidated and merged into a new company, the Brooklyn, Queens County and Suburban Railroad Company, which thereby acquired all the property rights, privileges and franchises of the said two constituent companies.

Extensions under Laws 1890, chap. 565, and amendatory acts:

McKibbin street, from Broadway to Harrison place.

Harrison place, from McKibbin street to Flushing avenue.

Varick street, from Harrison place to Meeker avenue.

Morgan avenue, from Harrison place to Front street.

Bogart street, from Harrison place to Stagg street.

Stagg street, from Bogart street to Waterbury street.

Waterbury street, from Stagg street to Grand street.

Grand street, from Waterbury street to Morgan avenue.

Front street, from Morgan avenue to Sutton street.

Sutton street, from Front street to Greenpoint avenue.

White street, from McKibbin street to Evergreen avenue.

Evergreen avenue, from White street to Granite street.

379 Granite street, from Evergreen avenue to Bushwick avenue.

Bushwick avenue, from Granite street to Jamaica road.

Jamaica road, from Pennsylvania avenue to Bushwick avenue.

Pennsylvania avenue, from Jamaica road to Jamaica bay.

Wyckoff avenue, from Flushing avenue to city line.

Flatbush avenue, from Hanson place to Livingston street.

Liberty street, from Sands street to Clinton street.

Concord street, from Liberty street to Bridge street.

Bridge street, from Concord street to Fulton street.

Fulton street, from Bridge street to Sands street.

Bond street, from Fulton street to Gowanus canal, and across canal to Second avenue.

Second avenue, from Gowanus canal to Hamilton avenue.

Troy avenue, from St. Mark's avenue to city line.

Saratoga avenue, from Broadway to city line.

Ralph avenue, from Pacific street to city line.

Utica avenue, from Carroll street to city line.

Greene avenue, from Broadway to city line.

Madison street, from Broadway to city line.

In Flatlands (now thirty-second ward):

Albany avenue, from town line to Avenue K.

East Forty-first street, from Albany avenue to Flatlands avenue.

Rockaway parkway, from town line to Avenue E.

Avenue E, from Rockaway parkway to Remsen avenue.

Remsen avenue, from Linden street to Ralph avenue.

Avenue F, from Rockaway parkway to Ninety-third street.

Ralph avenue, from Remsen avenue to Avenue T.

Avenue T, from Ralph avenue to Flatbush avenue.

380 Linden street, from Rockaway parkway to Remsen avenue.

Rockaway parkway, from East New York avenue to town line.

In Flatbush (now twenty-ninth ward):

Albany avenue, from Avenue C to town line.

Canarsie lane, from Clove road to Avenue C.

Ralph avenue, from city line to East New York avenue.

Troy avenue, from city line to Malbone street.

Albany avenue, from city line to Grant street.

Grant street, from Albany avenue to East Thirty-seventh street.

East Thirty-seventh street, from Grant avenue to Avenue C.

Avenue C, from East Thirty-seventh street to Albany avenue.

In Newtown:

Dry Harbor road, from Metropolitan avenue to Strong's causeway.

Metropolitan avenue, from Dry Harbor road to town line.

(The following special acts, which were introduced in evidence upon this trial and abstracts of which are attached to the evidence herein designated by the exhibit numbers designated below, were attached in full to this report:)

Laws 1858, chap. 303, Exhibit 7 S.

Laws 1870, chap. 746, Exhibit 49 C.

Laws 1885, chap. 139, authorized the Brooklyn City Railroad Company to sell to the Broadway Railroad Company the line on Fulton street and Cypress avenue, from East New York to Cypress hills.

Laws 1860, chap. 461, Exhibit 64 C.

Laws 1873, chap. 788, Exhibit 1 S.

381 IV.—*As to Special Franchises of the Nassau Electric Railroad Company.*

Lines formerly owned by the Atlantic Avenue Railroad Company.

Atlantic street, from South ferry to Flatbush avenue.

The franchise for this street as above stated was originally granted to the Brooklyn & Jamaica Railroad Company by the special law, chap. 256 of the Laws of 1832, a copy of the material portions of which is hereto annexed, and the property rights, franchises and privileges of the Brooklyn & Jamaica Railroad Company were afterward acquired by foreclosure sale and intermediate conveyances by the Atlantic Railroad Company.

(By such foreclosure sale and conveyances the Atlantic Avenue Railroad Company also acquired the property rights, franchises and privileges of the Brooklyn & Jamaica railroad, from Flatbush avenue easterly to Jamaica, and subsequently leased the same to the Long Island Railroad Company, which now operates the same under a long lease, and the Atlantic Avenue Railroad Company therefore makes no further report thereof, assuming that the Long Island Railroad Company will make such report thereof as may be proper and necessary and that the same will be assessed as hereto-

fore to the Long Island Railroad Company. Easterly to Flatbush avenue all of the property on which railroad tracks are laid was owned in fee by the railroad companies, and the rights to operate such tracks were acquired as the right to lay tracks on their property and not as a right to construct, maintain or operate railroads in streets, and no further report is therefore made here as to any of the railroad property on Atlantic avenue easterly to Flatbush avenue.)

382 Fulton street, from Fulton ferry to Front street.

Front street, from Fulton street to Adams street.

Adams street, from Front street to Boerum place.

Boerum place, from Fulton street to Bergen street.

Washington avenue, from Atlantic avenue to Stirling place.

Stirling place, from Washington avenue to New York avenue.

New York avenue, from Stirling place to Perry avenue, and thence on Perry avenue to Douglass street.

Douglass street, from Rogers avenue to East New York avenue.

East New York avenue, from Douglass street to Liberty avenue.

Liberty avenue, from East New York avenue to Enfield street.

Seventh avenue, from Flatbush avenue to Twentieth street.

Twentieth street, from Seventh avenue to Ninth avenue.

Buffalo avenue, from Bergen street to Douglass street.

The franchise for the foregoing streets was granted by the special law, chap. 705 of the Laws of 1873, a copy of which is hereto annexed, the original grant being to individuals and their assigns named therein and afterwards acquired by the Atlantic Avenue Railroad Company.

Hicks street, from Atlantic avenue to Hamilton avenue.

Fifteenth street, from Hamilton avenue to Ninth avenue.

Ninth avenue, from Fifteenth street to Twentieth street.

The franchise for these streets, as above, stated was granted by the special law, chapter 307 of the Laws of 1874, to the Greenwood and Coney Island Railroad Company, and afterward acquired

383 by the Atlantic Avenue Railroad Company by the special law, chap. 282 of the Laws of 1886.

Concord street, from Washington avenue to Navy street.

Navy street, from Concord street to Park avenue.

Vanderbilt avenue, from Park avenue to Ninth avenue.

Ninth avenue, from Vanderbilt avenue to Greenwood cemetery.

The special law, chap. 600 of the Laws of 1870, granted a franchise for these streets to the Park Avenue Railroad Company.

Park avenue, from Washington avenue to Broadway.

The special law, chap. 448 of the Laws of 1874, granted a franchise for this street to the Park Avenue Railroad Company.

The property of the Park Avenue Railroad Company was afterward acquired by the Nassau Electric Railroad Company under general law.

Bay Nineteenth street, from Benson avenue to Bath avenue.

Bath avenue, from Bay Nineteenth street to Bay Thirty-fifth street.

New Utrecht avenue, from Thirty-ninth street to Eighty-first street.

This line was constructed by the Brooklyn, Bath and West End Railroad Company, organized under general law, chap. 140 of the Laws of 1850, and was afterward leased to and consolidated with the Atlantic Avenue Railroad Company under general law.

The Brooklyn, Bath and West End Railroad Company also constructed a railroad from Eighty-first street to Bay Nineteenth street, on its private right-of-way, and from Thirty-fifth street to
384 Coney island on its private right-of-way. As no streets were laid out across the right-of-way at the time that the railroad was built, the railroad properties upon this private right-of-way are not included in this report.

Fifth avenue, from Atlantic avenue to Ninety-ninth street.

The franchise for the portion of this route from Atlantic avenue to Thirty-seventh street was granted to the Brooklyn & Jamaica Railroad Company under the general railroad law of 1850, and was afterward acquired by the Atlantic Avenue Railroad Company through foreclosure and purchase, and the Coney Island, Fort Hamilton & Brooklyn, under general law, extended the line from Thirty-seventh street to Ninety-ninth street.

All the property rights and franchises of the various roads hereinbefore mentioned were acquired by the Nassau Electric Railroad Company by purchase of all the stock of said roads, and said roads were merged in the Nassau Electric Railroad Company under general law.

Lines of the Nassau Electric Railroad Company.

South Eighth street, from Wythe avenue to Havemeyer street.
South Fifth street, from Marcy avenue to Union avenue.
Marcy avenue, from Metropolitan avenue to Fulton street.
Johnson avenue, from Union avenue to Morgan avenue.
Morgan avenue, from Johnson avenue to Flushing avenue.
Hamburg avenue, from Flushing avenue to Cooper street.
Cooper street, from Hamburg avenue to Broadway.
Rockaway avenue, from Broadway to Jamaica bay.
Park avenue, from Broadway to Beaver street.
Beaver street, from Park avenue to Wall street.

385 Commencing at Bath avenue and Twenty-fourth avenue and running through Twenty-fourth avenue to Cropsey avenue; then to Harvey, crossing the bridge to Coney island at West Seventeenth street and from there to Surf avenue.

Commencing at West Seventeenth street and Mermaid avenue, along the latter to Stillwell avenue and thence to Surf avenue.

Commencing at New Lots road and Rockaway avenue; thence to Berryman street, to Sutter avenue, to the town line at Old South road.

Beginning at Ferry place and Hamilton avenue to Union street

thence up Union street to the Park plaza, around the plaza to Douglass street and along that thoroughfare to Rogers avenue.

Beginning at Church lane and the old Canarsie road, along the road to East Ninety-second street, to Rockaway avenue and along the avenue to Canarsie landing.

Beginning at Rockaway and Denton avenues, along Denton avenue to Avenue M; thence across Paerdegat basin to Bergen beach.

Jefferson street, from Bushwick avenue to Central avenue.

Central avenue, from Jefferson street to Chauncey street.

Rogers avenue, from Bergen street to Avenue F.

Avenue F, from Rogers avenue to Ocean avenue.

Ocean avenue, from Avenue F to Emmers avenue.

Thirty-ninth street, from Third avenue to Thirteenth avenue.

Thirteenth avenue, from Thirty-ninth street to Thirty-seventh street.

Thirty-seventh street, from Thirteenth avenue to Fourteenth avenue.

386 Church avenue, from Thirty-sixth street to Rockaway avenue.

Eighty-sixth street, from Fifth avenue to Thirteenth avenue.

Fourteenth avenue, from Eighty-sixth street to Bath avenue.

Bath avenue, from Fourteenth avenue to Bay Nineteenth street.

The Nassau Electric Railroad Company, the Kings County Electric Railroad Company and the Coney Island, Fort Hamilton and Brooklyn Railroad Company were incorporated under the general law, chap. 565, of the Laws of 1890, and the acts amendatory thereof and supplementary thereto, and these several companies obtained their consents of local authorities to the construction of the above-mentioned lines, and afterward the three companies were merged in the Nassau Electric Railroad Company.

The consent of the city of Brooklyn to the construction of the following lines was burdened with the conditions that the company should annually, on November first, pay into the treasury of the city of Brooklin the following percentage, namely: "Whenever its total annual gross receipts realized by it from the operation of its railroad upon the streets aforesaid shall average twenty thousand dollars or less per mile of its railroad so operated, one per cent. annually of the said annual gross receipts; and whenever said total annual gross receipts shall average more than twenty thousand dollars per mile of its railroad so operated and shall not exceed forty thousand dollars per mile, two per cent. of said annual gross receipts; and whenever its total annual gross receipts shall average more than forty thousand dollars per mile of its railroad so operated, three per cent. annually of the said annual gross receipts."

387 The lines affected by this provision are the following:

South Eighth street, from Wythe avenue to Havemeyer street.

South Fifth street, from Marcy avenue to Union avenue.

Marcy avenue, from Grand street to Fulton street.

Johnson avenue, from Union avenue to Morgan avenue.

Morgan avenue, from Johnson avenue to Flushing avenue.
Hamburg avenue, from Flushing avenue to Cooper street.
Cooper street, from Hamburg avenue to Broadway.
Rockaway avenue, from Broadway to East New York avenue.
Park avenue, from Broadway to Beaver street.
Beaver street, from Park avenue to Wall street.
Jefferson street, from Bushwick avenue to Central avenue.
Central avenue, from Jefferson street to Chauncey street.
Sackett street, from Columbia street to Hoyt street.
Hoyt street, from Sackett street to Bergen street.
Bergen street, from Boerum place to Buffalo avenue.

The South Brooklyn Central Railroad Company obtained the franchise under which these lines were constructed under the General Law, chap. 140 of the Laws of 1850 and the acts amendatory thereof and supplementary thereto, and afterward the South Brooklyn Central Railroad Company was leased by and merged with the Atlantic Avenue Railroad Company prior to the merger of that company with the Nassau Electric Railroad Company.

Laws 1832, chap. 256, authorized the Brooklyn and Jamaica
388 Railroad Company to acquire the stock of the Brooklyn, Jamaica and Flatbush Turnpike Company, and to construct a railroad from any eligible point in the village of Brooklyn to the village of Jamaica and also to the villages of Flatbush or Flushing.

(The act in full was attached to the report.)

(The following special acts, which were introduced in evidence upon this trial, and abstracts of which are attached to the evidence herein designated by the exhibit numbers indicated below, were attached in full to this report:)

Laws 1870, chap. 600, Exhibit 25 N.
Laws 1870, chap. 605, Exhibit 55 C.
Laws 1873, chap. 703, Exhibit 12 N.
Laws 1873, chap. 704, Exhibit 23 N.
Laws 1873, chap. 705, Exhibit 24 N.
Laws 1874, chap. 307, Exhibit 27 N.
Laws 1874, chap. 448, Exhibit 26 N.

V.—*As to Special Franchises of the Coney Island and Gravesend Railroad Company Possessed by the Brooklyn Heights Railroad Company, Lessee.*

Emmons avenue, from Ocean avenue to Coney Island Plank road; Coney Island Plank road, from Emmons avenue to West Sixth street; West Sixth street to Neptune avenue; Neptune avenue to West Eighth street; West Eighth street to Surf avenue; Surf avenue to West Thirty-fifth street.

The franchises to construct this road were obtained by the Coney Island and Gravesend Railroad Company under the General Law, chap. 565 of the Laws of 1890 and the acts amendatory thereof and supplementary thereto.

Beginning at a point on Nostrand avenue at the boundary line of division between the towns of Gravesend and Flatlands at
389 or near the point formed by the intersection of Avenue Q and Nostrand avenue; thence along the surface of Nostrand avenue to Avenue U; thence along the surface of Avenue U to Bragg street; thence along the surface of Bragg street to Emmons avenue.

West Thirty-fifth street to Neptune avenue; thence along the surface of Neptune avenue to West Eighth street.

From the intersection of Emmons avenue and East Fourteenth street on East Fourteenth street to Voorhees avenue; along Voorhees avenue to Shellbank creek, so called.

Beginning at a point on Ocean avenue at the boundary line of division between the towns of Gravesend and Flatlands; thence — Ocean avenue to Emmons avenue.

Beginning at the intersection of Nostrand avenue and Avenue Q; along Avenue Q to Kings Highway road; along Kings Highway road to Twenty-second avenue and Seventy-eighth street; along the surface of Seventy-eighth street to Twenty-third avenue; along Twenty-third avenue to Cropsey avenue; to Harway avenue; along Harway avenue to Avenue Z; along and across Avenue Z to West Eighteenth street; along West Eighteenth street to West Seventeenth street; along West Seventeenth street to Surf avenue.

Beginning at the intersection of Eighty-sixth street and Twenty-fifth avenue; along Eighty-sixth street to Shell road and Gravesend avenue; along Shell road to Neptune avenue.

Beginning at the intersection of Twenty-second avenue and West street; along the surface of West street to Kings Highway road; along Kings Highway road to Van Sicklen street; along Van Sicklen street to Eighty-sixth street.

390 Beginning at the intersection of Twenty-third avenue and Warehouse avenue; along Warehouse avenue to Surf avenue.

Beginning at the intersection of Twenty-second avenue and Stillwell avenue; along Stillwell avenue to Surf avenue.

Beginning at the intersection of Avenue G and East Fourteenth street; along East Fourteenth street to Voorhees avenue.

Beginning at Bath avenue in said town of Gravesend at the boundary line between the towns of New Utrecht and Gravesend; along Bath avenue to Bay Thirty-seventh street; along Bay Thirty-seventh street to Cropsey avenue.

Beginning at Benson avenue, where the same intersects the town line of the towns of New Utrecht and Gravesend; along Benson avenue to Bay Thirtyseventh street; Bay Thirty-seventh street to Bath avenue.

Beginning at the intersection of Mermaid avenue and Stillwell avenue; along Mermaid avenue to West Thirty-fifth street.

Beginning at the intersection of Twenty-fourth avenue and Benson avenue; along Twenty-fourth avenue to Cropsey avenue.

Beginning at a point in Kings Highway road at the boundary line

or patent line division between the towns of Flatlands and Gravesend; along the surface of Kings Highway road to Avenue Q.

Beginning at the intersection of West Eighth street and Surf avenue; along Surf avenue to West Fifth street, and along West Fifth street to Sea Breeze avenue; along Sea Breeze avenue to East
391 Fifth street, and thence northerly along East Fifth street to end or terminus of said East Fifth street.

Beginning at the intersection of Emmons avenue and Ocean avenue along Ocean avenue; across and along the surface of Emmons avenue, and across and along the bridge continuation of Ocean avenue; across Sheepshead bay, and along the surface of said Ocean avenue to the Atlantic ocean.

VI.—*As to the Special Franchise of the Prospect Park and Coney Island Railroad Company.*

This is a steam railroad corporation owning its own roadbed and right of way, and, according to the present information of its officers, it has no special franchise.

VII.—*As to the Special Franchise of the New York and Coney Island Railroad Company.*

This is a steam railroad corporation, the route of which extends from at or near the southerly terminus of the Prospect Park and Coney Island Railroad Company on Coney island westerly to at or near the westerly end of Coney island, all in the borough of Brooklyn. It owns its own roadbed and right of way, no part of which, according to the present information of its officers, was laid out over any then existing street or highway, but all or at least nearly all, of the streets and highways which now cross the route were laid over the lands of the railroad company, and therefore this company has no special franchise.

VIII.—*As to the Special Franchise of the Prospect Park and South Brooklyn Railroad Company.*

This is a steam railroad company owning its own right of way, and, according to the present information of its officers, it has no special franchise.

392 IX.—*As to the Special Franchise of the Sea Beach Railway Company.*

This is a steam railroad company owning its own roadbed and right of way, and, according to the present information of its officers, it has no special franchise.

X.—*As to the Special Franchise of the Sea View Railroad Company.*

This is a steam railroad corporation owning its own roadbed and

right of way, and, according to the present information of its officers, it has no special franchise.

XI.—*As to the Special Franchises of the Brooklyn Union Elevated Railroad Company Possessed and Enjoyed by the Brooklyn Heights Railroad Company, Lessee.*

Lines formerly of the Union Elevated Railroad Company.

Flatbush avenue, from Fulton street to Fifth avenue.
Fifth avenue, from Flatbush avenue to Thirty-eighth street.
Broadway, from Broadway ferry to Lexington avenue.
Sands street, from Fulton street to Adams street.
High street, from Fulton street to Adams street.
Adams street, from Sands street to Myrtle avenue.
Hudson avenue, from Myrtle avenue to Fulton street.
Myrtle avenue, from Adams street to Wyckoff avenue.

The franchise for the above-named lines was granted to the Union Elevated Railroad Company under general law, chapter 140 of the Laws of 1850, and general law, chapter 606 of the Laws of 1875, and the laws amendatory thereof and supplementary thereto, and all the said properties were leased to the Brooklyn Elevated railroad.

Lines formerly of the Seaside and Brooklyn Bridge Elevated Railroad Company.

Thirty-eighth street, from Fifth avenue to Third avenue.
393 Third avenue, from Thirty-eighth street to Fifty-seventh street.
Crescent street, from Fulton street to Jamaica plank road.

The franchises for the above-named lines were granted to the Sea Side & Brooklyn Bridge Elevated Railroad Company under general law, chap. 140 of the Laws of 1850, general law, chap. 606 of the Laws of 1875, and the acts amendatory thereof and supplementary thereto.

The Sea Side & Brooklyn Bridge Elevated Railroad Company was subsequently leased to the Brooklyn Elevated Railroad Company.

Lines formerly of the Brooklyn Elevated Railroad Company.

From Fulton ferry to York street.
York street, from Main street to Hudson avenue.
Hudson avenue, from York street to Myrtle avenue.
Grand avenue, from Myrtle avenue to Lexington avenue.
Lexington avenue, from Grand avenue to Broadway.
Broadway, from Lexington avenue to Jamaica plank road.
Alabama avenue, from Jamaica plank road to Fulton street.
Fulton street, from Alabama avenue to Crescent street.

The franchises for the above-named lines were granted to the Brooklyn Elevated Silent Safety Railway Company by special law,

chap. 585 of the Laws of 1874, and the name of said corporation was changed to the Brooklyn Elevated Railway Company and the franchise granted by special law, chap. 422 of the Laws of 1875, and further amended by special law, chap. 539 of the Laws of 1885.

394 All the property and franchises of the above-named Union Elevated Railroad Company, Sea Side & Brooklyn Bridge Elevated Railroad Company and Brooklyn Elevated Railway Company were acquired in 1898 by foreclosure and reorganization by the Brooklyn Union Elevated Railroad Company, which is now the owner thereof.

Under the general and special laws hereinbefore mentioned, the Brooklyn Union Elevated Railroad Company, as successor of the corporations hereinbefore mentioned, possesses the right to construct and operate an elevated railroad over the following streets in the city of Brooklyn:

Adams street, from Myrtle avenue to Fulton street.

Putnam avenue, from Fulton street to Grand avenue.

Grand avenue, from Putnam avenue to Lexington avenue.

Park avenue, from Grand avenue to Classon avenue.

Classon avenue, from Park avenue to Kent avenue.

Kent avenue, from Park avenue to First street.

First street, from Kent avenue to Broadway.

Park avenue, from Hudson street to Grand avenue.

Fulton street, from Crescent avenue to Woodhaven.

Thirty-ninth street, from Third avenue to the East river, or the three following routes in its place:

Fortieth street, from Third avenue to Second avenue.

Second avenue, from Fortieth street to Thirty-ninth street.

Thirty-ninth street, from Second avenue to the East river.

Water street, from Fulton street to Adams street.

Sands street, from Fulton street to Adams street.

Fifth avenue, from Thirty-seventh street to Sixtieth street.

Prospect avenue, from Fifth avenue by tunnel to the Prospect Park and Coney Island railroad at the city line.

Nassau street, from Fulton street to the bridge.

395 Myrtle avenue, from Fulton street to Adams street.

Franklin avenue, from Myrtle avenue to Wythe avenue.

Wythe avenue, from Myrtle avenue to Division avenue.

First street, from the crossing at First street and South Eleventh street to Meserole avenue.

Meserole avenue, from First street to Manhattan avenue.

Manhattan avenue, from Meserole avenue to Newtown creek.

The following table shows the amount and character of the construction of the several lines of the Brooklyn Union Elevated Railroad Company:

Location.	Double track main.		Third rail.	Single track on sidings and cross-overs.	Switches.		Frogs.		General description.					
									Long girders.			Trans. girders.		
	Length in feet.	Weight of rail per yard.	Length in feet.	Length in feet.	Number on main lines.	Number on side tracks.	Number on main lines.	Number on side tracks.	Construction.	Length.	Depth.	Construction.	Length.	Depth.
		Lbs.												
Broadway ferry to Cypress hills (over Broadway, Fulton avenue and Crescent street)	33,475′	{ 1/2 = 85 / 1/2 = 60 }	.....	7,110′	22	16	22	19	Plate	50′	4′ 3″	Plate	35′	5′
Fulton ferry to Ridgewood (over York street, Hudson avenue and Myrtle avenue)	26,180′	{ 1/2 = 85 / 5/8 = 60 }	.....	1,380′	15	1	15	1	Plate and lattiсed	50	4′	Plate and lattiсed	45′	4′ 6″
Brooklyn bridge to Navy street and Grand avenue and Lexington avenue	18,300′	{ 1/2 = 85 / 2/3 = 60 }	10,350′	2,150′	13	7	13	7	Plate and lattiсed	50′	4′	Plate and lattiсed	45′	4′ 6″
Myrtle and Hudson to Sixty-seventh street (over Hudson, Flatbush, Fifth avenue, Thirty-eighth street and Third avenue)	26,372′	{ 1/2 = 85 / 5/8 = 60 }	53,946′	3,365′	19	15	19	23	Plate	52′	4′ 3″	Plate	45′	5′
Brooklyn bridge	12,125′	70	24,850′	60′	4	.....	16	.....	16	.....				
Totals	117,422′	....	89,146′	14,275′	79	39	91	50	91	50′				

NOTE.—The construction on the Brooklyn bridge is the property of the city of New York according to the contract attached to Schedule "C," and is not assessable.

Passenger stations, side track and intertrack = 61.

The above is a description of the "special franchise" of the Brooklyn Union Elevated Railroad Company, as shown by map herewith submitted, all in the borough of Brooklyn, possessed and operated by the Brooklyn Heights Railroad Company, lessee.

397 (The following special acts, which were introduced in evidence upon this trial and abstracts of which are attached to the evidence herein designated by the exhibit numbers indicated below, were attached in full to this report.

Laws of 1875, chap. 422. Exhibit 2 B.
Laws of 1885, chap. 539. Exhibit 3 B.
Laws of 1874, chap. 585. Exhibit 1 B.

THE FOLLOWING ARE CONDITIONS, OBLIGATIONS OR BURDENS IMPOSED UPON SUCH SPECIAL FRANCHISES, OR UNDER WHICH THE SAME ARE ENJOYED:

Such of the following provisions of general and special laws and of municipal ordinances, resolutions, and regulations as are now valid and in force and applicable to such special franchises:

1. The provisions of the Greater New York charter, sec. 49, subdivision 21, together with the ordinance of the common council of the city of Brooklyn as thereby authorized, requiring the payment of an annual license fee of twenty dollars for each car daily operated or used in that portion of the city heretofore known as the city of Brooklyn.

2. The provisions of chap. 1008 of the Laws of 1895, providing that in all cases where a surface railroad is laid and operated through any street in the then city of Brooklyn one-fourth of the cost of repavement shall be assessed upon the railroad.

3. The provisions of the railroad law, sec. 98, requiring every street surface railroad corporation, so long as it shall continue to use any of its tracks in any street, avenue or public place in any city, to have and keep in permanent repair that portion of such street, avenue or public place between its tracks and two feet in width outside of its tracks, under the supervision of the
398 proper local authorities, and whenever required by them to do so, and in such manner as they may prescribe.

4. The provisions of the general railroad law, secs. 101 and 104, limiting rates of fare chargeable by street surface railroad companies.

5. The provisions of the Greater New York charter, particularly secs. 579 to 588, both inclusive, regulating and restricting the use of electric wires, appliances, currents and conductors therefor.

6. The provisions of the railroad law, sec. 98, and of the municipal ordinances and regulations passed in pursuance thereof, requiring street surface railroad corporations in the borough of Brooklyn to remove and carry away ice and snow from streets occupied by their railroad tracks.

7. The provisions of the railroad law, sec. 109, and of the municipal ordinances and regulations, limiting the kind of rail which may be used by street surface railroad corporation.

8. The provisions of chap. 417 of the Laws of 1895, and the action of local authorities in pursuance thereof, requiring every street

surface and elevated railroad company carrying on business within the city to transport free every policeman and fireman in the course of the performance of his official duties.

9. The provisions of chap. 825 of the Laws of 1896 requiring a permit for opening, otherwise disturbing or interfering with the surface of any street or avenue in the then city of Brooklyn without first obtaining a permit from the department of city works, and the payment of cost of street inspection therefor on work occupying over four hours.

10. The provisions of the ordinance of the former city of Brooklyn limiting the rates of speed of cars on street surface railroads.

399 11. The provisions of the ordinances of the former city of Brooklyn requiring stoppage of certain street crossings and elsewhere.

12. The provisions of sec. 100 of the railroad law limiting and regulating the kind of motive power to be used on street surface railroads and the regulations and limitations imposed in consents of the State board of railroad commissioners to the use of electricity as a motive power, including the prohibition upon the sale of electricity to other persons or corporations than railroad companies.

13. The provisions of law requiring common carriers, including railroad corporations, to operate their railroads notwithstanding strikes of employees and notwithstanding such operation may be unprofitable.

14. The provisions of the general statutes, including the penal code, limiting and regulating the number of hours per day and rate of compensation and times of making compensation to railroad employees.

15. The provisions of general laws requiring payment of percentages of gross receipts to municipalities, including chap. 252 of the Laws of 1884, chaps. 65 and 642 of the Laws of 1886, secs. 93 to 95, both inclusive, of the railroad law.

16. Provisions of the constitution and of general laws requiring consents of local authorities and of abutting property owners, or in lieu thereof, the determination of commissioners approved by appellate division, as a condition of construction, maintaining or operating railroads, and the conditions, burdens and obligations imposed in such consents in accordance therewith.

17. The ordinance of the former city of Brooklyn requiring and regulating the use of fenders upon street surface cars.

400 18. The provisions of general and special law granting or in pursuance of which grants have been made of franchises to various other railroad companies to construct, maintain and operate railroads over various streets and portions of streets for which the Brooklyn Heights Railroad Company or its lessor companies have special franchises, or on streets or private property parallel or adjacent thereto, in particular the franchise and railroad of the Kings County Elevated Railroad Company and of the Brooklyn Union Elevated Railroad Company in the borough of Brooklyn, the

railroad and franchises of the Brooklyn City and Newtown Railroad Company and of the Coney Island and Brooklyn Railroad Company in the boroughs of Brooklyn and Queens.

This company asks leave to present a more full and detailed statement of the conditions, obligations and burdens imposed upon its special franchises or under which the same are enjoyed in such supplemental reports as it may hereafter make.

401 SCHEDULE H.

Statement in Detail of Rentals Paid.

Name of lessor.	Annual rental paid by lessee.	Portion used for payment of interest on debt of lessor.	Portion used for payment of dividends on capital stock of lessor.
Brooklyn City R. R. Co	$1,567,715 43	$348,500 00	$1,200,000 00
Nassau Electric R. R. Co	188,519 48	151,019 48	
Brooklyn, Queens County and Suburban R. R. Co	328,865 01	328,700 01	
Sea Beach R'way Co	27,714 79	27,333 33	
Brooklyn Union Elevated R. R. Co.	154,080 00	128,900 00	
Prospect Park and Coney Island R. R. Co	1,444 44		
Total amount of annual rental	$2,268,339 15	$984,452 82	$1,200,000 00

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.

SCHEDULE K.

Statement of Cost, Value on Basis of Reproduction and Assessment of Real Estate in Each Tax District.

* Name of tax district wherein located. (Give village, if one, and county.)	Cost of tangible real property included in "special franchise."	Value of tangible real property included in "special franchise" on basis of cost of reproduction.	Cost of real property not included in "special franchise."	Value of real property not included in "special franchise" on basis of cost of reproduction.	Last assessment of real property included in "special franchise." *	Last assessment of real property not in connection with "special franchise." *	Give total number of miles of tracks and sidings—or wires, cables, or other conductors—or of main pipes and number of service pipes—as the case may be, in, upon, under or over streets and highways in each tax district.
Borough of Brooklyn, city of New York	.....	$6,028,429 57	(Not ascertainable.)	.....	Not separately	assessed ...	See Schedule B.
Borough of Queens, city of New York	.....	374,717 71	(Not ascertainable.)	.....	"	" ...	"
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
Total.....	.....	$6,403,147 28	.....	.....	.....	.....	.....

* Name of each tax district in which assessments are made for real estate.
* Give facts in this column when such property has been separately assessed.

403 *Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock, and All Other Non-taxable Securities Owned.*

SCHEDULE L.

Description.	Amount.
.....	.....
None.....	.....
.....	.....
Total.....	.....
.....	.....
Value of tangible personal property	.....
Total assessment of personal property.....	.....
.....	.....
.....	.....

Details of Roads Owned and Leased.

SCHEDULE M.

Name of road.	From	To	Miles owned.	Miles leased.
See	Schedule B and	C.		
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	Total mileage.	.....	.....

This schedule is applicable only to railroad corporations.

404 SCHEDULE N.

Show changes, if any, between June 30, 1899 and October 1, 1899, in real estate or otherwise, affecting the purpose of this report.

.....

.....

.....

.....

.....

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the copartnership making the same.

STATE OF NEW YORK, } ss:
County of Kings, }

T. S. Williams, secretary and treasurer of the Brooklyn Heights Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof at the close of the year, ending June 30, 1899, as well as of its financial condition and affairs on the said date, and a like true, full and correct statement
405 of the real property of said company on the first day of October, 1899, to the best of my knowledge and belief.

[L. S.] (S'g'd) T. S. WILLIAMS.

Subscribed and sworn to before me, this 30th day of October, 1899.

A. L. BROUGHAM,
Notary Public, Commissioner of Deeds, for the City of New York, Residing in the Borough of Brooklyn.

JANUARY 30, 1900.

To the State Board of Tax Commissioners, Albany, N. Y.

GENTLEMEN: Pursuant to the verbal request of your representative, Mr. J. H. Ehrehart, I send herewith:

1. Comparative statement showing the assessments on tracks, structure, etc., levied by the local board of assessors for the year 1899 on the various companies included in the Brooklyn rapid transit system, and the valuations placed upon these properties by our own engineers. Of course the sum of our valuations as shown in this table is not the sum of the valuations submitted to your board, for the reason that the local assessors' valuations included rights of way and other property not included in the tangible real property comprising a special franchise.

2. A detailed report giving items which make up total present value of tangible real property, viz.: $6,403,147.28, as shown in

Schedule K, printed page 10 of report of Brooklyn Heights Railroad Company submitted to your honorable board in November, 1899. For age of track see original report.

The information which your board desires relative to the Kings County Elevated Railroad Company is presented in the report of that company.

406 We should prefer if it meets the view of your board that the assessments against the following companies should be against the Brooklyn Heights Railroad Company, as lessee, that company being obliged to pay the taxes of the lessor companies under the terms of its leases:

Brooklyn Union Elevated Railroad Company (comprising former Brooklyn Elevated Railroad Company and Sea Side & Brooklyn Bridge Elevated Railroad Company).

Brooklyn City Railroad Company.

Brooklyn, Queens County & Suburban Railroad Company.

Sea Beach Railway Company.

Sea View Railroad Company (including former Brooklyn & Brighton Beach Railroad Company).

Kings County Elevated Railroad Company (successor of former Kings County Elevated Railway Company).

Nassau Electric Railroad Company (including former Atlantic Avenue Railroad Company, South Brooklyn Central Railroad Company, Brooklyn, Bath & West End Railroad Company, and present Coney Island & Gravesend Railroad Company.

Very respectfully,

T. S. WILLIAMS,
Secretary and Treasurer.

407 TABLE NO. 1.

Assessments in Litigation.

Company.	Local assessors' valuation.	Our valuation.
Brooklyn Elevated R. R. Co.	$3,625,000	$2,699,260 00
Sea Side and Brooklyn Bridge El. R. R. Co.	575,000	530,325 20
Brooklyn Heights R. R. Co.	75,000	25,698 54
Brooklyn City R. R. Co.—		
Brooklyn	2,500,000	1,497,647 65
Queens	600,000	240,262 72
Brooklyn, Queens Co. and Sub. R. R. Co.—		
Brooklyn	460,000	236,800 17
Queens	185,000	102,503 37
Sea Beach Railway Co.	430,000	266,297 81
Nassau Electric R. R. Co.	1,310,000	669,618 00
Atlantic Ave. R. R. Co	550,000	171,012 00
South Brooklyn Central R. R. Co.	135,000	42,317 00
Brooklyn, Bath and West End R. R. Co	265,000	126,093 00
Coney Island and Gravesend Railway Co.	115,000	59,580 00
Brooklyn and Brighton Beach R. R. Co.	690,000	215,500 00
Kings County Elevated R. R. Co.	2,460,000	1,200,000 00
	$13,975,000	$8,082,915 44

Company.	Brooklyn.			Queens.			Total.			Value per mile.		
	1900 State board.	Our valuation of tangible property.	1899 local board.	1900 State board.	Our valuation of tangible property.	1899 local board.	1900 State board.	Our valuation of tangible property.	1899 local board.	State board.	Our valuation.	
Brooklyn Heights	$250,500	$20,439 66	$75,000	.....	.....	.....	$250,500	$20,439 66	$75,000	$779,279	$61,380	Brooklyn.
Brooklyn City	10,559,900	1,587,171 00	2,500,000	950,500	299,192 93	600,000	11,510,400	1,886,363 93	3,100,000	129,046	19,395	Brooklyn.
B., Q. C. & S.	3,515,550	199,499 93	400,000	456,600	75,524 78	185,000	3,972,150	275,024 71	645,000	49,582	15,607	Queens.
										253,099	14,362	Brooklyn.
										159,004	26,315	Queens.
Nassau Electric	6,375,000	904,742 61	2,375,000	.....	.....	.....	6,375,500	904,742 61	2,375,000	106,346	10,592	Brooklyn.
B'klyn Un. El.	4,760,950	.....	3,625,000	.....	.....	.....	5,098,950	3,229,585 20	4,200,000	275,745	158,780	Brooklyn.
S. Side & Bk. Br.	848,000	3,229,585 20	575,000	.....	.....	.....	.....	.....	.....	.....	.....	.....
Kings Co. El.	3,040,500	1,382,973 00	2,460,000	.....	.....	.....	3,040,500	1,382,973 00	2,460,000	349,088	158,779	Brooklyn.
Total	$29,359,670	$7,414,411 40	$12,070,000	$1,407,100	$374,717 71	$785,000	$30,766,770	$7,789,129 11	$12,855,000	$148,558	$37,599	

409 TABLE No. 2.

Detail Report, Giving Items which Make up Total Present Value of Tangible Real Property, viz., $6,403,147.28, as Shown in Schedule K, Printed Page 10, of Report of Brooklyn Heights Railroad Company, Submitted to State Board of Tax Commissioners in November, 1899.

Name of company.	Length of single track, including sidings.	Present value, including overhead structure, special work, etc.
Brooklyn Heights R. R. Co., borough of Brooklyn..	3,525 ft.	$17,430 83
Brooklyn City R. R. Co.—		
Borough of Brooklyn.....	864,155 "	1,587,171 00
Borough of Queens.....	202,498 "	209,192 93
Brooklyn, Queens Co. and Sub. R. R. Co.—		
Borough of Brooklyn.....	146,736 "	199,499 93
Borough of Queens.....	30,353 "	75,524 78
Nassau Electric R. R. Co., borough of Brooklyn....	633,155 "	994,742 61
Includes former—		
Atlantic Ave. R. R. Co.....	Now merged.	.....
So. B'klyn Central R. R. Co...		
Bk. Bath and West End R. R. Co...		
Coney Island and Gravesend R'way Co.. Leased.		
Brooklyn Union Elevated R. R. Co., borough of Brooklyn.....	*20.34 miles.	3,229,585 20
Includes former—		
Brooklyn Elevated R. R. Co.		
Sea Side and Bk. Bridge El. R. R. Co.		
Total.....	.....	$6,403,147 28

* Double track.

410 *Brooklyn Heights Railroad Company.*

Including operations of Brooklyn City Railroad Company, Brooklyn, Queens County and Suburban Railroad Company and Sea Beach Railway Company for the entire fiscal year, and of the Brooklyn Union Elevated Railroad Company and Nassau Electric Railroad Company for the last three months of the fiscal year, all these companies being lessor companies during the periods named.

Disbursements of Earnings for Year Ending June 30, 1899.

Operating expenses paid from earnings, excluding taxes	$3,458,132 34
Maintenance expenses paid from earnings	891,772 77
Reconstruction expenses paid from earnings	300,482 33
New construction (extension) paid from earnings	.....
(Number of miles of latter.....)	
Total	$4,650,387 44

Itemize all sums paid in nature of local tax:

Percentage on gross earnings paid to municipality	$2,139 94
No. of cars 760 and 1054, part of year, license per car $20	16,956 66
Other licenses, tolls, etc	66,211 89
Total amount paid for taxes, percentages, licenses, etc., etc	$85,308 49

STATE OF NEW YORK, } ss.:
County of Kings, }

T. S. Williams, secretary and treasurer of the Brooklyn Heights Railroad Company, being duly sworn, deposes and says that
411 the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declare them to be true, to the best of my knowledge and belief.

T. S. WILLIAMS.

Subscribed and sworn to before me, this 30th day of January, 1900.

V. W. WICKES,
Notary Public, Kings County.

Supplemental Report of the Brooklyn Heights Railroad Company to the State Board of Tax Commissioners of the State of New York.

To —— ——:

Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make and file a supplemental report of the matters contained in the within blank and return to this office on or before January 25, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

412 Form 5.

(Copy.)

Tax district —.

Surface street railroads—Animal power, cable conduit, conduit electric, electric overhead, surface steam, other powers.

Supplemental Report of the Brooklyn Heights Railroad Company of Tangible Real Property Located in, upon, under, or above Streets, Highways, and Public Places.

To —— ——:

Pursuant to the provisionsof section 43, chapter 712, Laws of 1899, you are requested to make and file a supplemental report of the matters contained in the within blank, and return to this office on or before December 20th next.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

43 Form 5.

Electric Railways.

Overhead System.

	Single track.			Double track.			
	Miles.	Age.	Miles constructed since last tax assessment.	Miles.	Age.	Miles constructed since last tax assessment.	
Bracket cons.. .... Wooden poles.....							
Bracket cons..... Iron poles.....							
Span wire cons .... Wooden poles							
Span wire cons..... Iron poles.....	0.086	9 yrs.					
Total cost of property described above erected complete.....							$197 00
Total present value based on cost of production							$147 75

414 *Electric Railways.*

Conductors.

Conductors not in subways (exclusive of trolley wire).			Insulated conductors in subways.			Third rail system conductor rail.		
Miles.	Size.	Age.	Miles.	Size.	Age.	Weight per yard.	Section.	Age.

Total cost of property described above erected complete..... $.....
Total present value based on cost of reproduction..... $.....

Form 5.

Surface Street Railroads.

Track.

Motive power.*	Miles measured as single track.	Rails.			Kind of paving.†	Miles laid since last tax assessment.	
		Weight per yard.	Section, girder, tee or tram.	When laid.			
Cable.....	0.733	90½	Girder....	1898	Granite.....	.....	.....

Total original cost of property described above laid complete (not ascertainable from books)..... $.....
Total present value based on cost of reproduction..... $20,291 21

*When motive power is electricity, state whether conduit electric or overhead electric, and, if both systems are operated, report each system separately.
†If not paved, state kind of ballast and number of cubic yards per mile.

415 STATE OF NEW YORK, } *ss.:*
County of Kings, }

T. S. Williams, vice-president of the Brooklyn Heights Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to

be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

T. S. WILLIAMS,
Vice-President.

Subscribed and sworn to before me, this 9th day of April, 1900.

V. W. NICHES,
Notary Public.

Exhibit 5 H.

Contract of August 23, 1897, between the Trustees of the N. Y. & Brooklyn Bridge and the Brooklyn Heights R. R. Company, Subsequently Modified in Some Particulars by the Contract of Sept. 29, 1897.

Under this agreement the Brooklyn Heights R. R. Company and the other street railroads of Brooklyn agreed to construct tracks and terminals upon the bridge property under the direction of the trustees, but at the sole expense of the railroad companies. All construction work became the property of the bridge trustees as soon as put in place. The bridge trustees reserved the right to direct the operation of the railroads across the bridge and make all rules and regulations with respect to such operation. The railroad Co.
416 agreed to charge no additional fare for transporting passengers across the bridge and to pay to the trustees five cents per round trip for each car operated across the bridge; to protect the trustees against all damage suits, to employ only such employees as are satisfactory to the trustees, to divide its rights across the bridge with any other railroad company which might operate across the bridge, to enter into a bond of $100,000 for the performance of the conditions of the lease. The lease runs for ten years from its execution.

Exhibt 1 C.

Laws 1866, chap. 771, granted to the Williamsburgh and Flatbush Railroad Company the right to construct and operate, with horse power only, a railroad, commencing at the junction of Lee avenue with Division avenue, in the city of Brooklyn; through Division avenue to First street; through First street to South Seventh street; through South Seventh street to Fifth street; through Fifth street to Division avenue, to Lee avenue; through Lee avenue to Nostrand avenue, to the boundary line between Brooklyn and Flatbush; thence along the Clove road, to Clarkson avenue, in Flatbush.

The railroad not to be constructed unless upon the consent, first obtained, of a majority of the owners of land fronting on such portion of any street, signified in writing, acknowledged and recorded.

The conditions and restrictions upon and under which the company shall operate their road shall be such as govern the Brooklyn City Railroad Company in the operation of their railroad within

said city, and only such so far as the same may be applicable to said first named company and the road which it may construct.

EXHIBIT 2 C.

Laws 1866, chap. 823, granted to the Nassau Railroad Company the right to construct, maintain and operate, with horse power
417 only, a railroad, beginning at the foot of West Second street, at Hunter's point, in Queens county; along West Second street and the turnpike, across the bridge over Newtown creek leading to Union avenue; along Union avenue, Orchard street, Van Cott avenue, and Fifth street to Broadway; along Broadway and Rush street to Kent avenue; along Kent avenue and Clymer and Taylor streets to Washington avenue; along Washington avenue, Montgomery street and Franklin avenue to the town of Flatbush, with the continuation from Washington avenue along Park avenue and Flushing avenue to Raymond and Navy streets; along Raymond and Navy streets to Willoughby street; along Willoughby street to the city hall on Jeroloman street; along Jeroloman and Court streets to Atlantic street; along Atlantic street to South Ferry; thence returning by the same route to the junction of Broadway and Fourth street; along Fourth street and North Ninth street to Fifth street, and along Fifth street, Van Cott avenue, Orchard street, Union avenue, across said bridge over Newtown creek and along the turnpike and West Second street to the point of beginning.

Nothing in the act shall impair the right of the Brooklyn City Railroad Company to construct their road over Washington avenue or Kent avenue.

The act gives the company the right to run upon the tracks of any other railroad company already laid in any of such streets and to condemn the right to operate over such tracks.

The act required the company at all times to maintain their tracks in good order and keep the pavement between the tracks and for two (2) feet outside thereof on each side in good order and condition.

The cars must be of the most approved pattern, operated by horse power only.

418 The company shall pay to the city of Brooklyn, as compensation for the use of such streets, avenues and places, the sum of five per cent. (5 per cent.) annually upon its gross receipts from passengers, and shall also pay the same license fee, for each car used, as is now paid by other companies in said city, and shall be subject to such prudential laws, ordinances and regulations as the common council shall by ordinance from time to time prescribe, and shall charge no greater rate of fare for the transportation of passengers than the Brooklyn City railroad are or may be entitled to charge.

For a violation of any of the conditions of the act a resident taxpayer may make complaint to the city judge or county judge, and if the judge finds that such violation exists he shall make an order directing a compliance with such condition within a time to be

specified by him, and failure to comply with such order subjects the company to a fine of one hundred dollars ($100).

The company shall not have the right to construct or operate their railroad in any of the streets or avenues mentioned without the consent of a majority of the owners of land fronting on such streets, signed, acknowledged and recorded.

EXHIBIT 3 C.

Common Council Resolution, March 30, 1868.

This resolution authorized the Bushwick Railroad Company to extend their tracks from the corner of Fourth street and Broadway, along Broadway to Sixth street, along Sixth street to Division avenue, along Division avenue to Harrison avenue, along Harrison avenue to Tompkins avenue, along Tompkins avenue to Fulton avenue, along Fulton avenue to Hudson avenue, along
419 Hudson avenue to East Warren street, along East Warren street to the entrance of Prospect park. The rate of fare was fixed at the same rate then charged by the Brooklyn City Railroad Company. The company was required to keep in good repair the pavements of the streets between each track and three feet on either side. The license fee for each car to be the same then or thereafter fixed for other railroad cars by ordinances. Cars to be run at least every fifteen minutes, and the company to be subject to all ordinances of the common council. A bond of $5,000 to keep the streets in repair and clean was furnished.

EXHIBIT 4 C

Is granted in full in the application of the Brooklyn City Railroad Company for a writ of certiorari herein.

EXHIBIT 5 C.

Common Council Resolution, September 14, 1868.

Authorized the Greenpoint and Williamsburgh Railroad Company and the Southside Railroad Company to exchange their rights on Broadway and South Eighth street, between First and Fifth streets, so that the route of the Greenpoint and Williamsburgh railroad should be upon Broadway and the route of the Southside Railroad Company should be upon South Eighth street.

EXHIBIT 6 C.

Common Council Resolution of December 27, 1869.

This resolution authorized the Brooklyn City, Hunter's Point and Prospect Park Railroad Companies to operate their cars along Broadway to First street and along First street to Kent avenue, through South Seventh street to the intersection of Washington avenue.

420

EXHIBIT 7 C.

Common Council Resolution of August 23, 1869,

Authorized the Brooklyn City, Hunter's Point and Prospect Park Railroad Company to use Second street, from Broadway to Rush street.

EXHIBIT 9 C.

Common Council Resolution of December 19, 1870.

This resolution authorized the Bushwick Railroad Company to extend its tracks from its present terminus on Myrtle avenue along Myrtle avenue to the village of Glendale.

EXHIBIT 10 C.

Laws 1871, chap. 622, granted to the Brooklyn, Winfield and Newtown Railroad Company the right to extend their route along North Sixth street, from the East river to Fifth street; along Fifth street to Grand street; along Grand street to Union avenue; along Union avenue to Broadway; along Broadway to Myrtle avenue; along Myrtle avenue to Bushwick avenue; along Bushwich avenue to the Cemetery of the Evergreens; also along Gates and Albany avenues; also along Eighth street; along Division avenue; along Marcy and New York avenues to the city line.

It gave the Company the right to run over the tracks of any other railroad company upon any of said streets, and in case the parties cannot agree as to the compensation, then the company may condemn the right by appropriate action.

EXHIBIT 11 C.

Laws 1872, chap. 705, required the Brooklyn, Winfield and Newtown Railroad Company to terminate and close its line of railway in and through Eighth street, from Grand street to Broadway,
421 and in and through Myrtle avenue and Bushwick avenue, and granted it the right to extend its road along Broadway from Eighth street to First street, and to consolidate with other railroad companies.

EXHIBIT 12 C.

Common Council Resolution of July 6, 1875.

This resolution authorized the Bushwick Railroad Company to construct a road commencing at Graham avenue and Meserole street, along Graham avenue to Broadway, along Broadway to Flushing avenue, along Flushing avenue to Tompkins avenue.

Exhibit 13 C.

Common Council Resolution of October 2, 1876.

This resolution authorized the Broadway Railroad Company and the Bushwick Railroad Company to lay a side track on the northerly side of Broadway, west of Dunham place, and also on the south side of Broadway, west of Dunham place, and also authorized the new Williamsburgh and Flatbush Railroad Company to connect by a switch in the centre and on the south side of Broadway, west of Dunham place, east of the turnout of the Bushwick Railroad Company, and required the new Williamsburgh and Flatbush Railroad Company to remove the former sidings and connections on the northerly side of Broadway.

Exhibit 14 C.

Common Council Resolution, April 4, 1881,

Authorized the Brooklyn City Railroad Company to construct a double track railroad upon Broadway, from Gates avenue to Magnolia street, on Magnolia street, from Broadway to Myrtle avenue, on Myrtle avenue, from Magnolia street to the city line. Also upon Howard avenue, from its junction with Halsey street to its junction with Broadway, upon Broadway, from Howard avenue to Magnolia street, on Myrtle avenue, from Magnolia street to the city line.

422

Exhibit 15 C.

Common Council Resolution, February 26, 1885,

Authorized the Greenpoint and Lorimer Street Railroad Company to construct a street surface railroad, commencing at First street, near Broadway, along Broadway to Fifth street, along Fifth street to Division avenue, to Lee avenue, to Gwinnett street, on Gwinnett street to Broadway, to Lorimer street, on Lorimer street to Van Cott avenue, on Van Cott avenue to Manhattan avenue, on Manhattan avenue to Meserole avenue, on Meserole avenue to Franklin street, on Franklin street to Greenpoint avenue, on Greenpoint avenue to Greenpoint ferry. Also commencing at Van Cott avenue, along Lorimer street to Nassau avenue, on Nassau avenue to Manhattan avenue.

Exhibit 16 C.

Common Council Resolution, April 13, 1885,

Authorized Calvary Cemetery, Greenpoint and Brooklyn Railroad Company to construct its track, commencing at Blissville bridge, from Newtown creek, at the end of Greenpoint avenue, along Greenpoint avenue to Oakland street, along Oakland street to Van Cott avenue, along Van Cott avenue to Fifth street, along Fifth street to

Union avenue, along Union avenue to Broadway, along Broadway to Throop avenue, along Throop avenue to Park avenue, also commencing at Oakland street and Greenpoint avenue, along Greenpoint avenue to the East river; also from Greenpoint avenue to Oakland street, to Ash street. This consent was given on the condition that the company comply with the provisions of the railroad act of May 6, 1884.

423 EXHIBIT 17 C.

Common Council Resolution, March 9, 1885,

Repealed the ordinance described in Exhibit 15 C and authorized the Greenpoint and Lorimer Street Railroad Company to construct its road upon the streets named in Exhibit 15 C, with the added condition that no additional tracks should be built in Broadway, Fifth street or Lee avenue, and that the company comply with the provisions of the railroad act of May 6, 1884.

EXHIBIT 18 C.

Common Council Resolution, June 19, 1893,

Authorized the Brooklyn City Railroad Company to construct a railroad to be operated by horse or electric power upon the streets named in the evidence of T. S. Williams, which refers to this exhibit; upon condition that the poles should be of iron or steel; that the rate of speed should not exceed ten miles an hour, that all provisions of article IV. of chapter 565 of the Laws of 1890, and the acts amendatory thereof, pertinent thereto, should be complied with; that the company should pay to the city of Brooklyn one per cent. of the gross receipts annually upon the extensions named until the gross receipts average $20,000 per mile from such extensions; two per cent. when such gross receipts averaged more than $20,000 and less than $40,000 per mile; three per cent. when such gross receipts exceeded $40,000 per mile.

"Also, that the said Brooklyn City Railroad Company shall at all times keep accurate books of accounts of the business and earnings of its railroad, which books shall at all times be subject to the inspection of the local authorities of the city of Brooklyn * * * The president and treasurer of said Brooklyn City Railroad Company shall on or before November 1st in each year, after it shall
424 have commenced the operation of a railroad upon said extensions, or any part thereof, make a verified report to the comptroller of the city of Brooklyn, which report shall contain the gross amount of its receipts for the year ending September 30th next preceding, and the books of said Brooklyn City Railroad Company shall be open to inspection and examination by said comptroller or his duly appointed agent, for the purpose of ascertaining the correctness of its report as to its gross receipts * * * The said company

shall be under the same obligations and liabilities to the city of Brooklyn in relation to the construction and operation of said extensions hereby authorized as it now is in relation to the railroad and franchises now owned or operated by it in said city of Brooklyn."

Exhibit 19 C.

Common Council Resolution, October 18, 1875.

This resolution authorized the Bushwick Railroad Company to construct its road commencing at Broadway and Yates avenue, along Yates and Troy avenues to the city line.

Plaintiff's Exhibit 21 C.

Extract from proceedings of the common council of the city of Brooklyn at a meeting held September 16, 1853.

"Resolved, That this common council deem it necessary and proper and for the interests of the city that grants for city railroads should be made on the following conditions, to wit: That horse power shall be alone used for the propelling of the cars; that the improved flat-grooved rail shall be laid down even with the pavements of the various streets and avenues so as not to interfere with the passage of vehicles; that the pavement be kept in repair within the tracks and three feet on each side of said tracks; and also

425 "Resolved, That whenever an application shall be made to this common council for permission to lay a railroad track in any street or avenue in this city and it shall be decided by this common council to make such grant, notice shall be given of the intention of this common council to receive estimates, and license shall be granted on such terms and conditions as shall be deemed most conducive to public interest; said notice to be given in the corporation papers duly authenticated for at least twenty days before said grants shall be made; also

"Resolved, That each applicant receiving his license be required to give such security for the faithful performance of the conditions of said license as the common council may direct."

Adopted.

Extract from the proceedings of the common council of the city of Brooklyn at a meeting held December 19, 1853.

"The report of the special committee on railroads, together with sundry resolutions relative thereto were then read:

"Special committee on railroads, to whom was referred the duty of preparing such plans and regulations as may be necessary for the safety and best interest of the city, and also the names of the persons who are the lowest bidders for permission to lay rail tracks in the various streets pursuant to the resolutions heretofore adopted by this

board, respectfully report that having duly considered the subject, submit the following detail of plans and regulations for the approval of the board, to wit:

"That the rail to be used be the improved grooved iron rail laid even with the surface of the pavement, in such manner as
426 shall not interfere with the passage of vehicles over streets, and to be provided with suitable bridges at all gutters so as to admit the flow of water beneath the same. The rails to be laid on substantial sills of the best yellow pine timber with the best chestnut cross ties of suitable dimensions. The pavement of the best water stone to be kept in thorough repair within the tracks and three feet on each side thereof by the parties under the direction of such competent authority as the common council may designate. The cars to be used to be the most approved kind in style and finish, and of such size as shall be best adapted to the respective routes, to be propelled by horse power only, the horses to be provided with bells, and the cars with signal lights. Such number of cars shall be run on each route as public convenience shall require, and to be subject to such prudential regulations as the common council may from time to time adopt. No cars to be allowed to run on the Sabbath.

"Where two or more parties make use of the same track, or portions thereof, the said parties shall bear any equitable proportion of the expense of constructing and maintaining such track, or portion thereof, the same to be adjusted by mutual agreement, or by the common council—the construction of said roads to be commenced at the earliest practicable period and completely finished on or before the first day of December, 1854, so far as practicable. A double track may be laid commencing at the Fulton ferry and continuing through the centre of Fulton and other streets and avenues to the termination of the various routes, occupying not to exceed the space of fourteen feet six inches in width as laid down on the diagram herewith, and in taking up the streets for the purpose of laying the track the parties shall conform to the directions of the street committee of the common council.

"The respective parties to whom grants may be made shall enter into good and sufficient bonds for the faithful performance of
427 all the conditions, and that said routes shall be perfected, completed and conducted in an amount not less than $25,000, each route.

"That William Burden, Thomas Brooks and John Kellum are the lowest bidders on the route from Fulton ferry through Fulton street to Court street, thence to Hamilton avenue, thence to Third avenue, with branches to Greenwood Cemetery entrances, and thence to the city line, at four cents per passenger, and an annual fee to the city of $20 per car.

"That Henry N. Conklin and George L. Bennett are the lowest bidders of the route from Fulton ferry through Fulton street and avenue to the city line, at four cents per passenger, and an annual fee to the city of $20 for each car.

"That J. O. Whitehouse and Jonathan Stewart are the lowest bidders on the route from Fulton ferry through Fulton street to Myrtle avenue and to Division avenue, at four cents per passenger, and an annual fee to the city of $20 for each car.

"That Jeremiah Johnson and Thomas D. Hudson are the lowest bidders on the following routes, to-wit.: From Fulton ferry to Front street, thence to Hudson avenue, thence to Nassau street or Flushing avenue, also through Fulton street to Sands street, thence to Hudson avenue, thence to Nassau avenue or Flushing avenue, thence through Flushing and Kent avenues to the city line, at five cents per passenger, and an annual fee to the city of $10 for each car.

"That Chester Coleman and Samuel F. Whiting are the lowest bidders on the route from Fulton ferry through Furman street to Atlantic street, thence to Columbia street, thence to Hamilton avenue, thence to Third avenue, and thence to the city line, at five cents per passenger, and a fee so the city of $50 per annum for each car.

428 "That David Leavitt and his associates are the lowest bidders on the route from Fulton ferry through Fulton street and avenue to Flatbush avenue, and thence to the city line, with a branch through Powers street to Third avenue, and thence to the city line, at five cents per passenger, and an annual fee to the city of $20 per car.

"That David S. Mills is the lowest bidder on the route from the East river through Division avenue to the city line, at five cents per passenger, and an annual fee to the city of $10 per car.

"The committee also report that they received from the city clerk a proposition from William H. McDonald with an accompanying map for permission to lay railroad tracks through Fulton street to Front street, Front street to Bridge street, Bridge street to York street, York street to Gold street, Gold street to Tillary street, Tillary street to Canton street, Canton street to Park avenue, Park avenue to Clinton avenue, Clinton avenue to Flushing avenue, Flushing avenue to Williamsburgh line.

"Also a proposal from John White for a route through Fifth avenue.

"Also one from Messrs. Ward and White for a route from Hamilton Avenue ferry through Hamilton and Third avenues.

"The above routes not having been advertised for, your committee felt at liberty to do nothing more than to state the facts of the case.

"Your committee, in conferring with the lowest bidders in order to arrange the details for the proposed railroad grants, were informed by said bidders that they had with their associates consolidated their respective interests and formed themselves into a company under the name or title of the Brooklyn City Railroad Company.

429 "Your committee therefore recommend the adoption of the following report and resolution:

"Whereas, William Burden, Thomas Brooks, John Kellum, George

L. Bennett, Henry L. Conklin, John O. Whitehouse, Jonathan B. Stewart, Samuel F. Whiting, Chester Coleman, Jeremiah Johnson, Thomas D. Hudson, Davit Leavitt and others, the lowest bidders under the resolutions adopted by the common council on the 16th day of September last, for the various lines of railroads hereinafter mentioned are entitled to the said lines of railroad, according to the principle adopted by the common council on the 12th day of December inst.; and

"Whereas, the persons above named and others, have associated themselves together and have incorporated themselves under the act of the legislature of this State, entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 2, 1850, by the name of the 'Brooklyn City Railroad Company,' for the purpose of constructing, maintaining and operating said lines of railroad with a double track, for public use in the conveyance of persons and property through and into the county of Kings, and have desired that the assent of the corporation of the city of Brooklyn may be given to said company to construct, maintain and operate the said railroad across, along and upon the several streets and avenues embraced in the said lines as contemplated by the said act of the legislature; therefore

"Resolved, That the said The Brooklyn City Railroad Company have the assent of the corporation of the city of Brooklyn to the constructing, maintaining and operating by the said company of the railroad above mentioned, across, along and upon the several streets and avenues in the said city of Brooklyn, embraced in the said lines, as follows: From the termination of Fulton street, at or near
430 the Fulton ferry.

"1. Upon Fulton street, Furman street, Columbia street, Hamilton avenue, Third avenue to the city line. 2. Upon Fulton street, Court street, Hamilton avenue and Third avenue to the city line. 3. Upon Fulton street, Fulton avenue, Powers street and Third avenue to the city line. 4. Upon Fulton street, Fulton avenue and Flatbush avenue to the city line. 5. Upon Fulton street and Fulton avenue to the city line. 6. Upon Fulton street and Myrtle avenue to Division avenue. 7. Upon Fulton street, Sands street, Hudson avenue, Nassau street and Flushing avenue and Kent avenue to the city line. 8. Upon Fulton street, Front street, Hudson avenue, Nassau street, Flushing avenue and Kent avenue to the city line.

"And also upon the intersections of the said streets and avenues and roads with a double track, except upon the Front Street route, and on that route where a double track is impracticable with a single track, and upon other streets to be designated by the common council, as may best accommodate the public through which said Front Street route is located with a single track.

"Which assent is given upon the following terms and conditions, to be observed, kept and performed by the said company:

"The rails to be used shall be the improved grooved iron rails, laid even with the surface of the pavement in such manner as shall

not interfere with the passage of vehicles over the streets and suitable bridges at all the gutters so as to permit the flow of water under the same; the rails to be laid on substantial sills of the best yellow pine timber, with the best chestnut cross-ties of suitable dimensions.

"The pavement to be kept in thorough repair by said company within the tracks and three feet on each side thereof with
431 the best water stone, under the direction of such competent authority as the common council may designate.

"The cars to be of the most approved kind in style and finish, and of such sizes as shall be best adapted to the respective routes, to be propelled by horse-power only; the horses to be provided with bells and the cars with signal lights. Such number of cars shall be run on each route as public convenience shall require, and be subject to such prudential regulations as the common council may from time to time adopt. No cars to be allowed to run on the Sabbath.

"The double track shall not occupy more than fourteen feet six inches in width.

"The rates of fare for each passenger and the license fee for each car to be paid annually into the city treasury shall be on the respective lines above mentioned:

"1. Furman Street route, fare not to exceed five cents, license fee $50. 2. Court Street route, fare not to exceed four cents, license fee $20. 3. Powers Street route, fare not to exceed five cents, license fee $20. 4. Flatbush Avenue route, fare not to exceed five cents, license fee $20. 5. Fulton Avenue route, fare not to exceed four cents, license fee $20. 6. Myrtle Avenue route, fare not to exceed four cents, license fee $20. 7. Sands Street route, fare not to exceed five cents, license fee $10. 8. Front Street route, fare not to exceed five cents, license fee $10.

"The construction of said railroad to be commenced at the earliest practicable period, and completely finished on or before the first day of December, 1854, as far as practicable.

"If a double track shall not, in the judgment of the street committee of the city, be practicable on the Front Street route or any portion of it, then a single track shall be laid on it, or on such
432 portion of it as will not admit of a double track, and a return single track be laid in such other streets as, in the judgment of the said street committee, will accommodate that portion of the city through which said Front Street route is located.

"The taking up of so much of the streets and avenues as shall be necessary to lay the rails of the said lines of railroad shall be subject to the supervision and direction of the said street committee.

"Where lines of railroad, as hereinbefore described, run over the same ground, the same track shall be used, and nothing herein contained shall be construed to permit more than a double track of fourteen feet six inches in width upon any street or avenue in said city.

"The said company shall enter into good and sufficient bonds in an amount not less than two hundred thousand dollars, for the faithful performance of all the conditions and stipulations herein

contained, and that the said roads shall be perfectly completed and conducted."

"The question then being on the adoption of the report of the special committee on railroads * * * the report was then adopted.

"Approved December 22, 1853, Laws of 1854, chapter 77.

EDW. A. LAMBERT, *Mayor*."

In pursuance of these resolutions, the following bond or agreement was executed by the company, December 30, 1853, and delivered to the City of Brooklyn:

"Know all men by these presents:

That the Brooklyn City Railroad Company are held and firmly bound unto the City of Brooklyn, in the sum of two hundred
433 thousand dollars, lawful money of the United States of America, to be paid to the said The City of Brooklyn, and their successors, for which payment well and truly to be made, the said The Brooklyn City Railroad Company bind themselves and their successors firmly, by these presents.

Sealed with their seal; dated the thirteenth day of December, one thousand eight hundred and fifty-three.

(Here was set out in full the preambles and resolutions, contained in the foregoing report as adopted, as last above set forth.)

Now, therefore, the condition of the above obligation is such that if the said The Brooklyn City Railroad Company and their successors shall faithfully perform all the said conditions and stipulations aforesaid, and perfectly complete and conduct the said railroads, then the said obligation to be void, else to remain in full force and virtue.

(Corporate signature and seal of the Brooklyn City Railroad Company.)

Laws of 1854, chap. 77.

"An act in relation to the Brooklyn City Railroad Company.

Passed March 23, 1854.

§ 1. The Brooklyn City Railroad Company are hereby authorized to construct their railroad over and across Gowanus creek and Gowanus bay within the lines of Hamilton avenue, as the same has been laid out by law, and over and across Bushwick creek or inlet, provided suitable draws, of not less than thirty-six feet in width, be made over each of said creeks for the passage of vessels through the same.

§ 2. The said company are hereby authorized to construct and operate their said railroad over the several routes mentioned in their articles of association, and to continue the same from the
434 termination thereof, respectively, as designated in their said articles of association, filed in the office of the secretary of state on the seventeenth day of December last, and subject to the provisions of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April 2,

1850, into or through any town in the county of Kings, over, across or upon any road or highway therein, whenever the said company shall receive the consent, in writing, of the supervisor and commissioners of highways, or a majority of them, of any town in which said road or highway may be situated, and of at least two-thirds of all the owners of land along such road or highway, who actually reside on that part of said road or highway on which said railroad is to be constructed, such consent to be recorded in the office of the register of the county of Kings; and said company are hereby authorized, under the direction of the said commissioners, to regulate and grade such road or highway for the purpose of said road.

§ 3. The said company are hereby authorized to charge the rates of fare stipulated for the said routes respectively within the city of Brooklyn, in the conditions of the assent of the City of Brooklyn, adopted by the common council thereof on the seventeenth day of December last, and approved by the mayor thereof on the twenty-second day of December last, and such other rates within said city as may hereafter be agreed upon between the said company and the said City of Brooklyn.

§ 4. This act shall take effect immediately.

The foregoing act was amended by Laws 1855, chapter 274, by adding to section 3 the following, "but nothing herein contained shall affect the action heretofore had by the City of Brooklyn."

435 EXHIBIT 22 C.

Common Council Resolution, November 20, 1854.

This resolution extended the time named for the completion of the road of Brooklyn City Railroad Company until December, 1855, and authorized the construction of a road on Hamilton avenue and Church street from Hamilton Avenue ferry.

EXHIBIT 23 C.

Common Council Resolution, January 16, 1860.

Modifying the resolution, Exhibit 21 C, as follows:

Fare of adults to be five cents, tickets to be sold at the rate of four dollars per hundred. Children twelve years of age and over two years to be charged three cents. Children two years of age and under to pass free. This ordinance required the company to establish lines of two-horse cars on Fulton street and Fulton avenue to the city line, on Fulton street and Myrtle avenue to Broadway, on Fulton street and Sands street by way of Flushing avenue to Broadway, and to transfer passengers free at the corner of Classon and Flushing avenues. The ordinance required the company to construct a double-track railroad on Classon avenue, from Myrtle to Kent avenue, and to run the Greenpoint cars over the same. Also to construct a double track on Washington avenue, from Flushing to Kent

avenue, and on Forest street and Third avenue, from Fulton avenue to its connection at Ninth street. Also to construct double-track railroad on Columbia and Sackett streets, from Atlantic avenue to Hamilton avenue, and to run another line of cars from Fulton ferry thereon to the city line with only one fare from the Fulton ferry to the city line. Cars to leave Hamilton Avenue ferry on the arrival of each boat. The ordinance required the completion of a double-track road on Flatbush avenue to the city line, and further required the
436 construction of suitable waiting rooms on the Hamilton Avenue line, at the crossing points on the Flushing Avenue and Classon Avenue roads, and Fulton avenue.

Exhibit 24 C.

Common Council Resolution, July 16, 1866.

This resolution further modified the provisions of Exhibit 21 C with reference to fares, providing that the company should sell twenty tickets for one dollar. It required the company to commence the construction of tracks on Gates avenue before September 10, 1866; also to commence the construction of tracks on Graham avenue before May 10, 1867. It further required the company to issue transfer tickets at Classon avenue and Flushing avenue to either end of the Greenpoint and Flushing Avenue lines. It authorized the company to construct a double-track road on Gates avenue, from Fulton avenue to Marcy avenue, and on Marcy avenue, from Gates avenue to Fulton avenue, and on Gates avenue, from Marcy avenue to Broadway, and Graham avenue, from Flushing avenue to the northerly end of Graham avenue, and through Marcy avenue or Classon avenue, from Flushing avenue to Marcy avenue, provided that the said extensions should be operated with the same fare and subject to the same regulation and duty of keeping the pavement in repair, and other obligations then in force in regard to the existing lines of the company.

Exhibit 25 C.

Common Council Resolution, October 15, 1866.

This resolution authorized the Brooklyn City Railroad Company to alter that part of the Gates Avenue road west of Bedford avenue, and authorized it to lay tracks along Bedford avenue to Greene avenue and along Greene avenue over Bedford avenue to Fulton avenue.

437

Exhibit 26 C.

Common Council Resolution, July 20, 1868.

This resolution directed the Brooklyn City Railroad Company to lay a second track on Gates avenue, from the stables to Broadway.

EXHIBIT 27 C.

Laws 1872, chap. 171, authorized the Brooklyn City Railroad Company to extend its road, commencing at Fulton and Putnam avenues, running thence along Putnam avenue into Nostrand avenue, along Nostrand avenue to Halsey street, along Halsey street to Broadway.

Such extension shall be held and taken to be a part of the original road of said company, and the company shall be subject to the same obligations to the City of Brooklyn in relation thereto as they now are in relation to said original road.

EXHIBIT 28 C.

Common Council Resolution, May 20, 1878.

Requested the Brooklyn City Railroad Company to extend its tracks on Myrtle avenue from the present terminus to Bushwick avenue.

EXHIBIT 29 C.

Laws of 1854, chap. 370, authorized the commissioners of highways of the town of Flatbush, together with the supervisors of said town, to permit any railroad company to lay tracks upon Flatbush avenue, when the same shall be opened, graded and paved, for the transportation of passengers and freight, without steam.

438 EXHIBIT 30 C.

Laws of 1860, chap. 392, authorized the Flatbush Plank Road Company to permit the Brooklyn City Railroad Company, or any other company, to lay a horse-railroad track over the whole or any part of their road, commencing where the Flatbush avenue intersects their road, in the town of Flatbush, in place and in lieu of plank now used by them, and the Flatbush Plank Road Company may take the same rate of toll on said road as heretofore authorized to be taken on plank roads.

That part of the road upon which the rails are laid shall be partly paved and partly macadamized to the width of at least ten (10) feet. The roadway opposite to the rail track shall be kept as a gravel road.

EXHIBIT 31 C.

Consent of the Supervisor and Commissioners of Highways of the Town of New Utrecht, November 1, 1890,

That the Brooklyn City Railroad Company construct and operate by electricity its road upon Second avenue, Sixty-fifth street and Bay Ridge avenue, Thirteenth avenue, Eighty-sixth street; also upon Third avenue, Ninety-ninth street, Fifth avenue, "upon the express

condition that the mandatory provisions of chapter 252 of the Laws of 1884, pertinent thereto, and acts amendatory thereof, shall be complied with by said Brooklyn City Railroad Company"

EXHIBIT 32 C.

Common Council Resolution, July 1, 1889,

Authorized the Brooklyn City Railroad Company to construct its railroad from Flushing and Graham avenues to Bushwick avenue, also on Flushing avenue, from Knickerbocker avenue to the
439 city line, on the condition that the company should keep in permanent repair a portion of the avenue between its tracks and the rails of its tracks, and a space three feet in width outside and adjoining its tracks, on the further condition that the railroad company should furnish a bond for the performance of its covenants; that "the provisions of chapter 252 of the Laws of 1884, pertinent thereto should be complied with;" that the consent should be put up at auction by the comptroller of the city of Brooklyn, and should be sold to the company agreeing to give the largest percentage of the gross receipts. The Brooklyn City was the highest bidder and received the franchise.

(Exhibits 33 C and 34 C are abstracted in the evidence.)

EXHIBIT 35 C.

Consent of the Highway Commissioners of the Town of Flatbush, February 16, 1894,

To the construction by the Brooklyn City of its road on Vernon avenue to East Thirty-seventh street, on condition that the company pave the streets between its tracks and two feet outside, and comply with all the conditions contained in Exhibit 36 C.

EXHIBIT 36 C.

Consent of Highway Commissioners of the Town of Flatbush, December 16, 1893,

Authorized the Brooklyn City R. R. Co. to construct its road on Malbone street, from Nostrand avenue to East New York avenue, and upon the other streets named in the evidence of T. S. Williams, which refers to this exhibit number, on condition that the company comply with the conditions of the railroad law; that it pave between the tracks and two feet outside; that the style of road, poles and wires be similar to those in Brooklyn, and that a fare of five cents only be charged from any part of Flatbush to the city hall and bridge and the eastern district ferries.

440 EXHIBIT 37 C.

Consent of the Highway Commissioners of the Town of Flatlands, February 5, 1884,

To the construction by the Brooklyn City R. R. Co. of its tracks upon the streets named in the evidence of T. S. Williams, which refers to this exhibit number, on condition that the provisions of the railroad law be complied with, and that the company pave between the rails and two feet outside of the tracks.

EXHIBIT 38 C.

Consent of April 30, 1891, *by the Supervisor and Commissioner of Highways of the Town of Newtown,*

For the construction by the Brooklyn City of an electric road on Myrtle avenue in the town of Newtown, on condition that the provisions of the railroad law should be complied with.

(Exhibits 39 C to 45 C inclusive are abstracted in the evidence.)

EXHIBIT 46 C.

Common Council Resolution, December 11, 1893,

Authorized the Brooklyn City Railroad Company to construct tracks on Box street, from Manhattan avenue to Commercial street.

EXHIBIT 47 C.

Laws, 1860, chap. 462 (as amended by Laws 1863, chap. 217, authorized Ira Buckman, John T. Runcie and their successors to organize a company to lay a double railroad track on Grand street, from First street to Bushwick avenue, and through Bushwick avenue to Maspeth avenue, to the village of Newtown.

None other but double-platform cars of the most approved
441 modern style, manned with conductors and drivers and drawn by two horses, shall be run upon the road, and the same shall be run as often as public convenience shall require. But this provision shall not apply to that portion of the road outside the city of Brooklyn.

No greater amount than four (4) cents shall be charged for the transportation of a passenger from First street to Bushwick avenue, or five (5) cents to Miller's hotel at Maspeth, and ten (10) cents to the village of Newtown.

The railroad shall be constructed upon the most approved plan of city railroads, and shall be subject only to such reasonable rules and regulations as the common council of said city shall from time to time by ordinance prescribe for the regulation and government of all the city railroads of said city, and to the payment to said city of the same license fee for each car used on said road as is now paid

by other city railroads in proportion to the distance run in said county of Kings.

The railroad shall be completed from Grand Street ferry to Bushwick avenue, and the cars placed thereon, within six (6) months from the passage of this act.

EXHIBIT 48 C.

Laws 1862, chap. 199, authorized the Grand Street and Newtown Railroad Company to construct a double railroad track through and upon Graham avenue, in the city of Brooklyn, from their present track on Grand street to Meeker avenue, and thence through and upon Meeker avenue and some other street or avenue adjacent thereto and not over one thousand (1,000) feet therefrom, to Newtown creek, at the Penny bridge.

The company may use single horse cars on their road, and charge for the transportation of passengers a sum, on the extension, not exceeding three (3) cents.

442

EXHIBIT 49 C.

Laws 1870, chap. 746, authorized the Grand Street and Newtown Railroad Company, under their present charter, to construct a double railroad track upon and through Seventh street, from their present track on Grand street, to North Ninth and Withers streets; through Withers street to Ewen street; through Ewen street to Meeker avenue; through Meeker avenue to Smith street; also to lay a double railroad track on Grand street, from their present track on the corner of Bushwick avenue to Metropolitan avenue; thence through Metropolitan avenue to the Lutheran cemetery.

(Exhibits 50 C and 51 C are abstracted in the evidence.)

EXHIBIT 52 C.

Laws 1864, chap. 323, incorporated A. K. Meserole and others under the name of the Greenpoint and Williamsburgh Railroad Company, and authorized the company to construct and operate a railroad for conveying persons and property to and from Newtown creek and the Williamsburgh ferries by the following route:

Beginning at or near Newtown creek or Union avenue; thence running in straight lines as follows: Along Union avenue to Orchard street; thence to Van Cott avenue; thence to Fifth street; thence to South Eighth street; thence to First street; thence to North Fourth street; thence to Fifth street, and thence returning through Fifth street and Van Cott and Union avenues to the point of beginning.

The conditions and restrictions under which the company shall operate shall be such as now govern railroads in the city of Brooklyn and as may from time to time be prescribed by law, and said railroad shall be constructed in the same manner as other
443 railroads in said city and under the direction of the street commissioner.

Nothing contained in the act shall authorize the construction of said road without the consent in writing of a majority of the owners of property on the streets and avenues upon which such road is to be constructed, and such consent shall be proven, so as to entitle it to be recorded

EXHIBIT 53 C.

Laws 1874, chap. 574, authorized the Brooklyn Crosstown Railroad Company to construct and operate an extension of its road from Atlantic avenue, along Columbia street, to the Brooklyn basin; also from Columbia street, through Woodhull street, to Richard street; along Richard street to Elizabeth street.

The company shall keep the tracks and three (3) feet each side thereof in repair, and may charge the same fare for the conveyance of passengers, over the route hereby extended, as it is now authorized to charge, but shall not be allowed to charge any greater fare for its entire route by reason of the extension.

The company may condemn the right to operate over the tracks of any other company already laid upon said streets.

The act took effect only after the common council had given its consent to the use of the streets named.

EXHIBIT 54 C.

Common Council Resolution, June 8, 1874.

This resolution authorized the Brooklyn Crosstown Railroad Company to build an extension from Atlantic avenue along Columbia street to Brooklyn basin. Also from the junction of Columbia street with Woodhole street, through Woodhole street to Elizabeth street, in accordance with Exhibit 53 C.

444 EXHIBIT 56 C.

Common Council Resolution, January 8, 1872.

This resolution authorized the Williamsburgh and Flatbush Avenue Railroad Company to extend their double track from Nostrand avenue and Flushing avenue through Lee avenue to Division avenue, through Division avenue to Fifth street, through Fifth street to Broadway.

EXHIBIT 58 C.

Common Council Resolution, March 26, 1860.

This resolution authorized the Bushwick Avenue railroad to construct its route at the beginning of the junction of Bedford Avenue and the Myrtle Avenue plank road, thence along Bedford avenue to Morrell street, Meserole, South Fourth, First, South Seventh, Fourth, South Fourth, Meserole and Morrell streets and Bedford

avenue and Brooklyn avenue. The resolution required a bond of $50,000, which was furnished. The resolution required the pavements to be kept in thorough repair within the track and three feet outside with the best water stone, or Belgian, or other pavement with which the street might be paved under the direction of the proper officers. The fare to be not more than five cents except that school children could pay three cents and children under three years to be carried free. The company to pay the same license fee charged other companies in the city. The ordinances required the company to purchase, at an appraisement, the horses, real estate and buildings of the stage line running through South Fourth street. The ordinance provided that all rules, restrictions, resolutions or ordinances with regard to other railroads in the city should apply to these streets. The city reserved the right to grant to any other corporation the right to run over any of the tracks laid by the Bushwick Company upon the payment of compensation to be determined by arbitration. The company agreed to issue transfer tickets over from one route to another over any and all routes which they might cross or intersect irrespective of the ownership.

445

EXHIBIT 59 C.

Common Council Resolution, April 30, 1860.

This resolution authorized the predecessor of the Bushwick Avenue Railroad Company to change the route over a portion of Meserole and Morrell streets to Bushwick avenue, to run through Graham avenue, from the corner of Meserole street to Cook street to Smith street, to Debevoise street, to Bushwick avenue.

EXHIBIT 60 C.

Common Council Resolution, December 17, 1866.

This resolution repealed the time limit contained in the resolution of March 26, 1860, "Exhibit 58 C," and extended the time until one year from December 17, 1866.

EXHIBIT 61 C.

Common Council Resolution, March 10, 1879,

Authorized the Bushwick Railroad Co., upon getting consent of the Brooklyn City Railroad Co. and the South Brooklyn Central R. R. Company, to operate its cars from Tompkins avenue along Fulton avenue to Kingston avenue, along Kingston avenue to Bergen street, and along Bergen street to Classon avenue.

EXHIBIT 62 C.

Common Council Resolution, November 10, 1873.

Authorized the Bushwick R. R. Co. to extend its tracks from Meserole street along Graham avenue to Van Cott avenue, on Van Cott

avenue to Union avenue, on Union avenue to Greenpoint avenue, on Greenpoint avenue to the East river.

446 EXHIBIT 63 C.

Laws 1874, chap. 582, authorized the Bushwick Railroad Company to extend its tracks from their present terminus on Myrtle avenue, in the city of Brooklyn, along Myrtle avenue to the village of Glendale, in the county of Queens.

EXHIBIT 64 C.

Laws 1860, chap. 461, authorized the Broadway Railroad Company to lay down a single line of railroad track, commencing at their present track at South Sixth street, through Eighth street, to Ross street, and a double track through Ross street and Bedford avenue to Fulton avenue, and whenever Nostrand or Rogers avenues shall have been opened, graded and paved, to extend the line of double tracks to Fulton, and through Nostrand or Rogers avenues to the village of Flatbush; also to lay a single line of track commencing at their present track on South Sixth street through Eleventh street to South Fifth street; through South Fifth street to Montrose avenue; through Montrose avenue to Morrell street; through Morrell street to Johnson street; through Johnson street to Broadway, and a double line of tracks from Morrell street, through Johnson street, to its intersection with the Cypress Hills plank road, and over said plank road to Cypress avenue, and over Cypress avenue to the Cypress Hills cemetery; also whenever White, Bogart or Thomas streets and Central or Knickerbocker avenues shall have been opened and graded, the company may lay a double or single railroad track over the same, to the city line, from the intersection of either White or Bogart streets with the Cypress Hills plank road. The company is authorized to charge and collect, for the transportation of passengers and property over either of the roads mentioned, such fare as is prescribed in the third section of chapter 303 of the Laws of 1858.

447 The act provided that the tracks should be completed on or before the 1st day of October, 1861, or as soon thereafter as said streets and avenues were graded and paved.

EXHIBIT 64 C.

Laws, 1860, chap. 461, authorized the Broadway Railroad Company to lay its road in the streets named in the evidence of T. S. Williams, which refers to this exhibit number and authorized the company to charge the rates of fare prescribed in Laws, 1858, chap. 303 (Exhibit 7 S).

EXHIBIT 66 C.

Resolution of the Common Council of Long Island City, December 15, 1885,

Granted the Calvary Cemetery, Greenpoint and Brooklyn Railroad *Company the right* to construct its railroad on the streets named in the evidence of T. S. Williams, which refers to this exhibit number.

EXHIBIT 67 C.

Resolution of Common Council, July 11, 1887,

Granted to the South Brooklyn Street Railroad Company the right to build its road upon Second avenue, Thirty-ninth, Fifty-second and Fifty-third streets, upon condition that the company give a bond in $20,000; that the franchise be sold at public auction to the bidder who would give the largest percentage of its gross receipts; that the highest bidder would comply with the provisions of the railroad law of 1884.

EXHIBIT 68 C.

(These sufficiently appear in Defendant's Exhibit 35.)

448 EXHIBIT 1 N.

Common Council Resolution, March 26, 1860.

This resolution authorized the Brooklyn and Jamaica Railroad Company to construct and operate a continuation of its road for the transportation of passengers only upon Flatbush avenue, Fifth avenue from Atlantic avenue to Thirty-seventh street, with a branch through Third street to the city line, upon the express condition that steam power should be permanently removed from Atlantic avenue between Bedford and South ferry within six months from the passage of the resolution. The company was limited to a fare of five cents from Fulton, Wall or South ferries to the terminus of any route owned or used wholly or in part by the Brooklyn City, Central or Jamaica railroads.

Pavement should be kept in repair within the track and three feet outside, with the best water stone; that the company shall carry school children for three cents and children under four years of age free, and shall pay the same license fee as is charged on the railroads in the city of Brooklyn.

The city of Brooklyn reserved the right to grant the right to any other corporation to run over the tracks laid by the Brooklyn and Jamaica Railroad Company, on making compensation for the use.

EXHIBIT 3 N.

Common Council Resolution, April 30, 1860.

This resolution changed the route before granted over Meserole and Morrell streets to J. Whittlesey & Son, so that it would run through Graham avenue, Meserole street, Cook street, Smith street and Debevoise avenue.

EXHIBIT 4 N

Is printed in full in the application of Nassau Electric Railroad Company for a writ of certiorari herein.

449 EXHIBIT 5 N.

Contract of August 23, 1897,

Between the trustees of the New York and Brooklyn bridge and the Nassau Electric railroad. This contract contains the same conditions as Exhibit 5 H.

EXHIBIT 6 N

Is a grant by the common council of Brooklyn of the right to lay tracks on streets named in the evidence of T. S. Williams which refers to this exhibit number.

EXHIBIT 7 N.

Laws 1864, chap. 322, authorized the Brooklyn, East New York and Rockaway Railroad Company to construct and operate its road from Far or Near Rockaway, by the nearest direct route to the Jamaica South Plank and Rockaway roads, along those roads to Liberty avenue; on Liberty avenue to North Carolina avenue; on North Carolina avenue to Alabama avenue; on Alabama avenue to the Brooklyn and Jamaica plank road to Broadway; on Broadway to Chauncey street; on Chauncey street to Stuyvesant avenue; on Stuyvesant avenue to Hancock street; on Hancock street to Franklin avenue; on Franklin avenue to Lafayette avenue; on Lafayette avenue to Ryerson and Houston streets; on Ryerson and Houston streets to Park and Flushing avenues; along Park and Flushing avenues to Navy street and Hudson avenue; along Navy street and Hudson avenue, with single track, to York street and Plymouth street; on York street to Bridge street and on Plymouth street to Main street; along Bridge and Main streets to Water street; along Water street to Fulton ferry; also to extend their road from a point where the Rockaway turnpike intersects the Jamaica South plank road, along the Rockaway turnpike to the village of Jamaica
450 to Fulton avenue; also commencing at a point at the junction of Liberty avenue and Jamaica South plank road, along Liberty avenue to Jamaica.

The company was granted the right to use any portion of any other railroad track laid upon any part of the route designated, and in case agreement cannot be made with the owners the amount of compensation shall be ascertained by condemnation proceedings.

The company was required to obtain the consent of the majority of owners of property upon Fulton, Clermont, Atlantic, Adelphi and Lafayette avenues before constructing the road.

EXHIBIT 8 N.

Common Council Resolution, December 21, 1885,

Authorized the Prospect Park and Coney Island R. R. Company to construct a railroad commencing at Park avenue and Broadway, along Broadway in each direction to Park street and Locust street, to Beaver street, along Beaver street to Bushwick avenue, along Bushwick avenue to Jefferson street, along Jefferson street to Central avenue, along Central avenue to the city line, with a double track in each of said streets and avenues, except Park and Locust, under the express condition that the provisions of the railroad act of 1884 should be complied with.

EXHIBIT 9 N.

Common Council Resolution, July 7, 1886,

Authorized the Prospect Park and Coney Island R. R. Co. and Atlantic Ave. R. R. Co. to construct and operate a railroad by cable power upon the streets named in the evidence of T. S. Williams, which refers to this exhibit number.

451

EXHIBIT 10 N.

Common Council Resolution, October 11, 1886,

Authorized the Prospect Park and Coney Island R. R. Co. and Atlantic Ave. R. R. Co. to operate their road upon the streets named in the evidence of T. S. Williams, which refers to this exhibit number, by cable power, provided the companies comply with the provisions of the railroad law of 1884 and also that they give a bond in the sum of $50,000 to protect the city.

EXHIBIT 11 N.

Common Council Resolution of June 19, 1893,

Authorized the Nassau Electric Railroad Company to construct its railroad upon the streets named in the evidence of T. S. Williams, referring to this exhibit, upon certain conditions, among which were the conditions that the company should deliver a bond of $150,000 to the city, and should pay one per cent. upon the gross receipts until the gross earnings average $20,000 a mile; two per cent. upon gross receipts when the gross earnings were between $20,000 and

$40,000 a mile, and three per cent. annually upon the gross receipts when they averaged more than $40,000 per mile, the company to keep accurate books of accounts, subject to inspection of local authorities of the city.

EXHIBIT 12 N.

Laws 1873, chap. 703 authorized the Atlantic Avenue Railroad Company, in connection with their present railroad in Atlantic avenue, to construct extensions from Atlantic avenue southerly to Clarkson avenue, or East New York avenue, along Washington avenue, Albany avenue, Troy avenue, Utica avenue and Buffalo avenue.

In the operation of such extensions the company shall charge and receive, on all parts of their road in the city of Brooklyn, the
452 same rate of fare as was then charged by the Brooklyn City Railroad Company, and shall keep the pavements between the tracks and three (3) feet each side thereof in repair.

EXHIBIT 13 N

Is the contract between the Long Island Railroad Company and the commissioners, which is described in Exhibit 14 N.

EXHIBIT 14 N.

Laws 1859, chap. 484 provided for the appointment of commissioners, who were empowered to enter into a contract with the Long Island Railroad Company to close the entrances of the tunnel in Atlantic street, in the city of Brooklyn, and restore and pave the same, and also for the relinquishment by said company and its assigns of the right to use steam power within the city, and also that the company shall lay rails upon the surface of said street in a proper manner, and shall so keep and continue the same, and that the company or its assigns shall run horse cars, for freight and passengers, from the South ferry to the city line in such numbers and as often as may be required for the accommodation of the public, said cars to connect at the city line or east New York with steam power to the village of Jamaica, and trains to be run from Jamaica to east New York, each way, as often as once every half hour between six o'clock a. m. and eight o'clock p. m., and one night train, after ten o'clock p. m., each way. Way trains to be run as often and make the same stops as they do now, and so many of such trains as may be necessary shall be run through from the South ferry, Brooklyn, and from Jamaica, at such times and in such manner as to make connections with the trains of the Long Island Railroad Company at Jamaica, and such passengers and freight shall be
453 carried at a rate not exceeding that charged by the Long Island railroad over the road of said company.

Said contract shall also provide that the Long Island Railroad Company or its assigns should receive, as compensation for com-

pliance with such contract and the surrender of the right of the company and the Brooklyn and Jamaica Railroad Company to use steam within the city limits, a sum not exceeding one hundred and twenty-five thousand dollars ($125,000), which sum, with the expenses of the commission, should be assessed upon the land and premises described in the act.

The contract should also provide that the Long Island Railroad Company agree to conform the streets authorized to be used in the city to the grade lines determined by the common council, and that the common council may fix and regulate the rate of fare upon said horse railroad within the limits of said city, which shall be the same as charged by the Brooklyn City Railroad Company, and shall have municipal control and regulation of all said road within the limits of said corporation, and the common council shall, from the time of the compliance with the terms of such contract, have and possess the powers over the said road within said city, as to grade, rate of fare, control and regulation, specified in said act.

The commissioners shall not make said contract until the Brooklyn and Jamaica Railroad Company signify their assent to the provisions of the act by a properly executed and acknowledged instrument, which shall contain a full relinquishment of the right of said company to use steam within the corporate limits.

Upon the confirmation of the report of the commissioners, the right to use steam by the Long Island Railroad Company and by the Brooklyn and Jamaica Railroad Company within the limits of the city, shall cease.

454

EXHIBIT 15 N.

Laws 1869, chap. 444, authorized the Long Island Railroad Company to accept a lease of any railroad on Long island now connecting with said Long Island railroad, and to run and operate the same, and gave the Long Island Railroad Company certain other privileges, and provided that the Long Island Railroad Company could change its present running termination at the South ferry, Brooklyn, only after complying with the provisions of the contract authorized to be made by Laws 1859, chapter 484 (Exhibit 14 N).

(Exhibit 16 N is abstracted in the evidence.)

EXHIBIT 17 N.

Laws 1860, chap. 460, authorized the Brooklyn Central Railroad Company and the Brooklyn and Jamaica Railroad Company to consolidate, and upon such consolidation either shall be entitled to all the privileges enjoyed by the respective corporations theretofore, and to finish, complete and operate such lines of road as are designated in their respective articles of association and charters only upon the petition of a majority of the owners of property in interest upon each of the streets and avenues upon the line of the road.

The company, after consolidation, was authorized to use and

operate, from the termination of their roads, tracks in or through any town in the county of Kings whenever it received the consent of the supervisors and commissioner of highways of any town and of at least two-thirds of all the owners along such road or highway who were actual residents upon said road.

The companies so consolidated shall be subject to the same municipal regulations and charge the same rate of fare as charged by the Brooklyn City Railroad Company, and nothing con-
455 tained in the act should impair or interfere with any of the privileges of the Brooklyn City Railroad Company.

The right of the consolidated company to construct and operate a railroad upon Lafayette, Bedford and Gates avenues shall be mutually enjoyed by the said company and the Brooklyn City Railroad Company.

The act provided further that any agreement made with the Long Island Railroad Company, or by the Brooklyn and Jamaica Railroad Company, or the consolidated company with the commissioners appointed under Laws of 1859, chapter 151 (Exhibit 14 N), providing for the closing of the tunnel in Atlantic street, which shall prohibit the use of steam power upon said road within the limits of the city of Brooklyn, shall be binding upon each of said companies.

Exhibit 18 N.

Laws 1863, chap. 303, authorized the South Brooklyn and Bergen Street Company to construct and operate the railroad described in its articles of association, provided the same be constructed within two (2) years, but said railroad shall not be constructed unless the consent thereto be first obtained in writing of the majority of the owners of property upon the several streets upon which the railroad is to be constructed.

The conditions and restrictions under which the company shall operate their road shall be such as govern the Brooklyn City Railroad Company in the operation of their railroad, and only such so far as the same may be applicable to said company.

Exhibit 19 N.

Laws 1865, chap. 558, authorized the Brooklyn and Canarsie Railroad Company and the South Brooklyn and Bergen Street Railroad Company to consolidate, to assume the name of the Brooklyn and Canarsie Railroad Company, and gave to the consolidated
456 company all the privileges and property enjoyed by said corporations prior to such consolidation.

Exhibit 20 N.

Laws 1865, chap. 513, authorizes Cornelius Bennett and his associates to lay a single railway track, commencing on the road leading from Canarsie to the landing at Jamaica bay, at such bay, and running along said road through Canarsie and along Little lane to New

Utrecht lane; along New Utrecht lane to Bergen lane; along Bergen lane to the Shell road; along the Shell road to Gravesend.

The company shall not construct its road without the consent in writing of the supervisor and commissioner of highways of the town.

The cars may be driven either by horses or other animals, or by steam dummy engines.

The rate of fare was limited to three (3) cents per mile, counting fractions of a mile as one mile.

The act required the road to be commenced within two (2) years, and one-half the road to be in order for running within three (3) years from the date of the passage of the act.

(Exhibit 21 N is abstracted in the evidence.)

EXHIBIT 22 N.

Common Council Resolution, May 18, 1891,

Authorized the South Brooklyn Central R. R. Co. to construct its road upon the streets named in the evidence of T. S. Williams, which refers to this exhibit number, and all authorize the Atlantic Avenue R. R. Co. to extend its tracks on Bergen avenue to Buffalo avenue.

457 EXHIBIT 23 N.

Laws 1873, chap. 704, authorized the Atlantic Avenue Railroad Company to construct an extension from Atlantic avenue, along Boerum street, to Fulton street, to Adams street; along Adams street to Water street; along Water street to Fulton ferry; also with a single track through Fulton and Front streets to Adams street.

The company was authorized to run upon the tracks of any other railroad company laid on said streets, and in case of a failure to agree as to compensation, then the company might condemn the right

EXHIBIT 24 N.

Laws 1873, chap. 705, authorized Joel B. Erhardt and his associates to construct a railroad, with double or single track, commencing on Water street, at the Fulton ferry; along Water street to Adams street; along Adams street to Fulton street; over Fulton street to Boerum street; along Boerum street *street* to Atlantic and Bergen; along Bergen street to Flatbush avenue; along Flatbush avenue, from Atlantic avenue to Prospect park, and from Flatbush avenue, through and along Butler street to New York avenue; on New York avenue and Berry avenue to Douglass street, and from Douglass street to East New York avenue; on East New York avenue and Liberty avenue to the county line; also from Flatbush avenue, along Seventh street to the Greenwood cemetery; also commencing on Water street, opposite Fulton ferry, with a single track, through Fulton and Front streets to Adams street.

The railroad shall be subject to such reasonable rules and regula-

tions in respect thereto as the common council of the city of Brooklyn may from time to time by ordinance prescribe, and to the payments to the city of the same license fee annually, for each car run thereon, as is now paid by the other city railroads in
458 said city, and was authorized to charge the same rate of fare for the conveyance of passengers as is now charged by the other city railroads in said city, and shall keep the pavements of the streets between the tracks in repair in the manner provided to be done by the other railroads in said city.

The act authorized the incorporators or their assigns to operate over the tracks of any other railroad then constructed upon any of said streets, and in case of a failure to agree upon the compensation, then the incorporators might condemn the right.

Exhibit 25 N.

Laws 1870, chap. 600, authorized the Park Avenue Railroad Company to construct and operate their road.

The rate of fare should be the same as was then charged by the Brooklyn City Railroad Company, and the road shall be subject to the same laws and ordinances of the city of Brooklyn as applied to horse railroads generally in said city.

The road was authorized to condemn the right to run over the tracks of any other railroad company already in possession of the streets named.

The route was defined as follows: Beginning at a point on Water street, near Fulton ferry; running along Water street to Bridge street; along Bridge street to Park avenue; along Park avenue to Vanderbilt avenue; along Vanderbilt avenue and Ninth avenue to Greenwood cemetery; returning by the same route to corner of Park avenue and Gold street; thence along Gold street to Front street; along Front street to Fulton street, to Fulton ferry.

Until Park avenue shall be extended and opened to Bridge street, the route shall be along Concord street, between Bridge and Navy streets, and along Navy street, between Park avenue and Concord street.

459 The act abrogated and annulled the route described in the articles of association of the company.

Exhibit 26 N.

Laws 1874, chap. 118, authorize the Park Avenue Railroad Company to construct its railroad, connecting with its present railroad at the junction of Park avenue and Vanderbilt avenue, through Park avenue to Broadway; also connecting with its present railroad on Concord street, through Concord street to Washington street; through Washington street to Front street; through Front street to Fulton street, to Fulton ferry, and from Fulton ferry through Water street to Washington street and through Washington street to Front street.

The act authorized the company to condemn the right to run

over the tracks of any other railroad corporation already occupying any of said streets.

The act authorized the company to consolidate with any corporation having the right to operate a railroad through any of the streets of the county of Kings.

EXHIBIT 27 N.

Laws 1874, chap. 307, authorized the Greenwood and Coney Island Railroad Company to construct its railroad from the junction of Gravesend avenue through Tenth avenue to Nineteenth street; through Nineteenth street to Ninth avenue; through Ninth avenue to Fifteenth street; through Fifteenth street to Hamilton avenue and through Hamilton avenue to the Hamilton Avenue ferry; also from the junction of Hamilton avenue and Hicks street; through Hicks street to Atlantic street; through Atlantic street to the South ferry.

The act authorized the company to condemn the right to operate over the tracks of any other railroad already constructed in such streets.

460 The rate of fare shall be the same as was then charged by the Brooklyn City Railroad Company, and all laws and ordinances of the city of Brooklyn relating to horse railroads generally shall be applicable thereto.

The act authorized the use of steam power on that portion of the road running between Ninth avenue and Nineteenth street and Coney island.

EXHIBIT 28 N.

Common Council Resolution, October 11, 1886,

Authorized the Prospect Park and Coney Island Railroad Company and the Atlantic Avenue Railroad Company to construct its road upon the streets named in the evidence of T. S. Williams, which refers to this exhibit number, upon condition that a bond of $50,000 be given to the city.

(Exhibits 29 N and 30 N are abstracted in the evidence of T. S. Williams.)

EXHIBIT 31 N.

Common Council Resolution, June 19, 1893,

Authorized the Kings County Electric Railway Company to construct its road upon streets named in the evidence of T. S. Williams, which refers to this exhibit number upon condition, among others, that the company pay to the city one per cent. upon its gross earnings until its gross earnings reach $20,000 per mile, two per cent. upon its gross earnings when between $20,000 and $40,000 per mile, and three per cent. upon its gross earnings when they exceeded $40,000 per mile; that the provisions of the railroad law shall be complied with, and that company shall keep accurate books of account, subject at all times to the inspection of the local authorities of the city.

(Exhibits 32 N and 33 N are abstracted in the evidence.)

461 EXHIBIT 34 N.

Common Council Resolution, July 26, 1892.

Authorized the Coney Island, Fort Hamilton and Brooklyn Railroad Company to construct its railroad upon the streets named in the evidence of T. S. Williams, which refers to this exhibit number, upon furnishing a bond of $50,000, upon the condition that the company should be subject to all the provisions of the railroad law of 1890, and that the rate of fare should not exceed five cents.

(Exhibits 35 N, 36 N and 37 N are abstracted in the evidence of T. S. Williams.)

EXHIBIT 38 N.

Contract Dated June 26, 1896, Between the Nassau Electric Railroad Company, the Kings County Electric Railway Company, and the City of Brooklyn.

The contract recites the resolutions adopted June 19, 1893 (Exhibits 31 N and 11 N), also the commencement of an action for an injunction by one John Adamson to declare these resolutions void, and further recites the judgments at special term and in the general term in favor of the defendant, and an appeal by the railroad companies to the court of appeals, and in consideration of the abandonment of this appeal and the satisfaction of judgments, the parties agreed that the railroad companies would pay to the city of Brooklyn on the first day of November in each year three per cent. of the total annual gross receipts from the operation of the railroads upon the streets mentioned in said resolutions of June 19, 1893, the payment of this three per cent. to be in lieu of the percentages provided in the resolutions of June 19, 1893, but the city of Brooklyn to have the option of collecting either this three per cent. or the percentage provided by the resolutions. The contract further provides a
462 method for computing the percentages due, and that each company will keep on its books separate accounts of its receipts from each route.

EXHIBIT 1 S.

Laws 1873, chap. 788 authorized the Broadway Railroad Company to run its cars over the tracks of the Brooklyn City Railroad Company and the Grand Street, Prospect Park and Flatbush Railroad Company, from the foot of Broadway, at its intersection with First street, along First street to Grand street; along Grand street to Little Water street; along Little Water street to First street; along First street to Broadway, and provided that the Broadway Railroad Company should remunerate the other companies for running over their tracks.

The act further authorized the Broadway Railroad Company to construct a double track railroad from Broadway, through Reed avenue, to Fulton avenue.

EXHIBIT 2 S.

Common Council Resolution, July 8, 1878,

Authorized the Broadway R. R. Company to lay its tracks on Reid avenue and Fulton street, to the corner of Utica and Atlantic avenues.

EXHIBIT 3 S.

Common Council Resolutions, July 17 *and July* 21, 1893,

Authorized the Broadway R. R. Company to construct its railroad upon the streets referred to in the evidence of T. S. Williams, relating to this exhibit number, upon condition that the company furnish a bond in the sum of $100,000 and that it pay to the city one per cent. of its gross receipts until such gross receipts average $20,000 per mile; two per cent. of its gross receipts while its gross receipts are between $20,000 and $40,000 per mile, and three per cent. of its gross receipts when such gross receipts exceed $40,000 per
463 mile; that the provisions of article IV. of the railroad law shall be complied with; that the company shall keep accurate books of account, subject to the inspection of the local authorities of the city; and should annually make a verified report to the city, showing gross amount of its receipts for the year.

EXHIBIT 4 S

Is printed in full in the application of the B., Q. Co. and Sub. R. R. Co., herein.

EXHIBIT 5 S.

Common Council Resolution, October 18, 1875.

Authorized the Bushwick R. R. Co. to construct its tracks from Broadway along Yates and Troy avenues to the city line.

EXHIBIT 6 S

Authorizes consolidation of Yates Avenue and Flatbush R. R. Co. with Broadway R. R. Co.

EXHIBIT 7 S.

Laws 1858, chap. 303, authorized Augustus Ivins and his associates, provided they organize a company, as authorized by that act, to lay a double railway track on Broadway and Division avenue, from First street to Alabama avenue, and a single track through Alabama avenue to Atlantic avenue, and through Atlantic avenue to Georgia avenue, and through Georgia avenue, through and across the Jamaica turnpike; also a single track through South Sixth and

South Seventh streets to First street; along First street to Broadway.

The act required the company to keep the surface of the streets inside of the rails and for two (2) feet outside thereof in good repair, and authorized it to collect not to exceed five (5) cents for each passenger over twelve (12) years of age, three (3) cents for each
464 passenger under twelve (12) and over two (2) years, and nothing from any passenger under two (2) years, for any distance.

The cars shall be drawn only by horses, and the road shall be subject to such rules and regulations in respect thereto as the common council of the city of Brooklyn may from time to time by ordinance prescribe, and to the payment to the city of the same license fee annually, for each car run thereon, as is now paid by the other city railroads in said city.

The act authorized the company to operate over the tracks of any other railroad already laid in said streets, and in case of the failure to agree upon compensation, then the company was authorized to condemn the right.

The act required the railroad to be completed within eighteen (18) months, and the capital to be taxed in the city of Brooklyn, and that the cars shall be licensed, and pay a license fee, and be subject to police and municipal control, as provided in respect to other city railroads in said city.

The company was authorized to issue its bonds for constructing and equipping the road to the amount of one-half of the capital stock necessary for such purpose, provided that each stockholder should be personally liable for the payment of such bonds.

The company shall not construct its road until a majority of the owners of the property located on the line of said road shall sign a petition to the common council of the city of Brooklyn in favor of such construction.

Exhibit 8 S.

Laws 1861, chap. 222, authorized the Broadway Railroad Company to lay a double track railroad from the East river, at the foot of South Seventh street (now Broadway), along South Seventh street and South Sixth street to Broadway, and from South Seventh
465 street, at its intersection with Fourth street, along and upon Fourth street, across Broadway, at Bedford avenue, along Bedford avenue to Ross street; also to lay a double track along Atlantic avenue, from Bedford avenue to Franklin avenue; also upon Franklin avenue, from Atlantic avenue to Flatbush; also upon Warren street, from Franklin avenue to Vanderbilt avenue, and along Fifth street, commencing at South Sixth street, to Broadway, across Broadway to Lee avenue, and upon Lee avenue to Ross street.

Exhibit 9 S.

Common Council Resolutions, January 25 and February 1, 1864.

Authorized the Brooklyn City and Ridgewood R. R. Co. to construct

a horse railroad on Broadway, from East New York to Gates avenue, from Gates avenue to Fulton avenue, from Fulton avenue to Fulton street, to Washington street, to Sands street, to Fulton street, to Fulton ferry; also from Gates avenue through Harmon avenue to Lafayette avenue, to Raymond street, to Willoughby street, to Joralemon street, to Court street, to Atlantic street, to South ferry; also through Schermerhorn street and Lafayette avenue to Raymond street, with the same conditions as to fare, etc., that govern other railroads in the city, upon furnishing a bond in the sum of $25,000.

The resolution of February 8, 1864, authorized the Brooklyn, East N. Y. and Rockaway R. R. Co. to construct a railroad upon the streets named in the evidence of T. S. Williams, relating to this exhibit number, upon condition that the same license fee should be paid as was paid by other railroads in the city and that the company pay to the city of Brooklyn ten per cent. of the net earnings after the payment of interest and dividend.

466 EXHIBIT 10 S.

Laws 1864, chap. 248, authorized the Brooklyn City and Ridgewood Railroad Company, among other things, to acquire the right of way for its railroad in Queens county, and for the continuation and completion of its track in Kings county, in accordance with a resolution of the common council of the city of Brooklyn adopted January 25, 1864, and amended February 8, 1864, which resolution, by said act, was further amended and ratified.

This resolution gave to the Company the right to construct a track and operate horse cars, beginning at East New York, to the city line, through Broadway to Gates avenue; through Gates avenue to Fulton avenue; through Fulton avenue and Fulton street to Fulton ferry; also from Gates avenue, through Clermont avenue, to Lafayette avenue; through Lafayette avenue to Raymond street; through Raymond street to Willoughby street; through Willoughby street to Joralemon street; through Joralemon street to Court street; through Court street to Atlantic street; through Atlantic street to the South ferry; also from Court street to Schermerhorn street and Lafayette avenue to Raymond street.

This act amended said resolution by providing that the railroad should not be constructed upon Fulton street south of York street, and that it might be constructed through Jay street, from Willoughby to York street, and thence through York street to Fulton street, and also forbade the construction of its road upon Lafayette avenue or Clermont avenue, but authorized the construction of the road on De Kalb avenue, from Raymond street to Hamilton street, and along Hamilton street to Gates avenue.

The act provided that the fare to be charged should not
467 exceed the fares then determined for the city railroads in operation, and that the same provisions relating to the repairs of streets should also apply in full force to this road; also that the company should give a bond of twenty-five thousand dollars ($25,000).

The act further provided that the city should at any time within five years have the right to take possession of the road and its appurtenances, at the cost thereof.

Exhibit 11 S.

Common Council Resolution, March 2, 1868.

This resolution authorized the South Side Railroad Company to construct a single-track route through Union avenue, from Montrose avenue to Johnson street, through Johnson street to Broadway, through Broadway to South Eighth street and through South Eighth street to the East river, the company to give bond to the city to comply with certain requirements as to construction and operation; "and further provided that the city shall, at any time within five years, have the right to take possession of the said road and appurtenances at the cost thereof."

Exhibit 12 S.

Laws of 1872, chap. 863, authorized the South Side Railroad Company to purchase the stock of the New York and Flushing Railroad Company, of the Far Rockaway Branch Railroad Company, of the Rockaway Railway Company of Queens county, and of the Hunter's Point and South Side Railroad Company and to issue stock in exchange therefor.

After consolidation the company was authorized to operate its road with steam dummies on Bushwick avenue, Boerum street, Broadway and South Eighth street, or such other streets and avenues as the company and the common council of the city might agree upon.

468 Exhibit 15 S.

Common Council Resolution, June 15, 1885.

Granted the Broadway Railroad Company the right to lay a track on Ralph avenue, between Broadway and Fulton street, and also between Fulton street and the city line, and also on Fulton street, between the two parts of Ralph avenue.

Exhibit 16 S.

Laws 1866, chap. 910, authorized the Metropolitan Railroad Company to construct and operate a railroad, single or double track, for the transportation of persons and property by horse power from the ferry at the foot of South Seventh street along First street to North First street; on North First street to Second street; on Second street to North Second street; on North Second street to Metropolitan avenue, to the city line; also a single track through North Second street, from First street to Second street, and on North Third street from North Second street to First street, and on First street to North First

street, provided that the consent of a majority of the owners of property upon any street should be first obtained, acknowledged and recorded.

The company was further authorized to extend the railroad to Fresh Pond's and Lutheran cemetery.

The railroad shall not charge any greater rate of fare within the city than is or shall be authorized by the common council. It shall at all times keep in good repair the pavements of the street between the tracks and three (3) feet on each side thereof, and shall construct and at all times maintain suitable bridges and culverts at all the gutters crossed by the track.

The cars shall be propelled by horse power only, and the horses shall be provided with bells, and a double track shall not occupy more than four (4) feet six (6) inches in width. The license fee
469 for the cars shall be the same as that paid for the cars run by the other companies in the city of Brooklyn, and said company shall be subject to all the conditions, stipulations and agreements contained in the resolution of the common council passed December 31, 1863 (1853?)

Exhibit 18 S.

Common Council Resolution, November 20, 1893,

Authorized the Broadway Ferry and Metropolitan Avenue R. R. to construct its road upon the streets named in the evidence of T. S. Williams, which refers to this exhibit number, and to use electric power, provided the speed should not exceed ten miles per hour.

Exhibit 19 S.

Laws 1869, chap. 718, authorized the Brooklyn and Winfield Railway Company to construct a railroad, with single or double tracks, and to operate it with horse power, commencing at the intersection of Broadway and First street, running along First street to North First street; on North First street to Second street; on Second street to North Second street; on North Second street to Fifth street; on Fifth street to Van Cott avenue; on Van Cott avenue to Meeker avenue; on Meeker avenue to and across the Penny bridge; thence along the north road to Winfield and Newtown; also single track on North Second street, from Second street to First street, and a single track on First street, from North Second street to North First street.

Exhibit 20 S.

Laws 1870, chap. 612, changed the name of the Brooklyn and Winfield Railway Company to the Brooklyn, Winfield and Newtown Railway Company, and authorized it to extend its route from First street through and upon Grand street to Fifth street; on Fifth street to North Second street; on North Second street to Metropolitan avenue to Middle Village.

470 EXHIBIT 1 K.

Common Council Resolution, June 30, 1879,

Approved the construction of an elevated railroad as fixed and located by the rapid transit commissioners upon the lines mentioned in the evidence of T. S. Williams, which refers to this exhibit number, upon condition that the company give a bond of $200,000 that the road should be completed within the time fixed in the resolution, and that the company would pay into the city treasury, annually, two per cent. of its gross receipts.

EXHIBIT 2 K.

Report of rapid transit commissioners prescribing route and method of construction of lines described under 1 K.

EXHIBIT 3 K.

Common Council Resolution, December 10, 1888,

Approved the routes fixed by the rapid transit commissioners for the construction of the Fulton Elevated railway and granted consent of the city to such construction, upon condition that the plans of the rapid transit commissioners be followed in construction and that the rate of fare be no more than five cents for a continuous trip from Fulton ferry to the Brooklyn bridge and the terminus of the line.

471 EXHIBIT 4 K.

Report of the Kings County Elevated Railroad Company to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1899.

OFFICE OF THE
STATE BOARD OF TAX COMMISSIONERS,
ALBANY, *October* 1, 1899.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report for your company required by chapter 712, Laws 1899, a copy of which is inclosed herewith.

It is requested that you complete and forward such report within thirty days, as required by that act.

Very respectfully,

STATE BOARD OF TAX COMMISSIONERS.

Extract from law relating to taxation of special franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to
472 collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

473 SCHEDULE A.

Title of company, Kings County Elevated Railroad Company.
General offices at No. 168 Montague street, Brooklyn.
Date of close of fiscal year June 30.
For information concerning this report address T. S. Williams, secretary.

Officers of the Company, with Address.

President, Clinton L. Rossiter, No. 168 Montague St., Brooklyn.
Secretary, Timothy S. Williams, No. 168 Montague St., Brooklyn.
Treasurer, Timothy S. Williams, No. 168 Montague St., Brooklyn.
General manager, Clinton L. Rossiter, No. 168 Montague St., Brooklyn.

SCHEDULE B.

Description of Special Franchise Showing Streets, Highways, or Public Places Possessed or Rights Enjoyed, and in What Village, Tax District or Districts Same is Located, and Statement of Maps Accompanying this Report.

The special franchise owned and operated by the Kings County Elevated Railroad Company consists of an elevated railroad constructed on Fulton street from Fulton ferry to east New York; on Snediker avenue to Eastern parkway; on Eastern parkway to Market street; on Market street to Liberty avenue, and on Liberty avenue to the city line.

The length of main double track is 4,600 feet. In the con-
474 struction the longitudinal girders average 50 feet in length and 4 feet in depth, and the transverse girders 45 feet in length and 4 feet 6 inches in depth, all latticed; there are thirty stations.

SCHEDULE C.

Copy of Special Law, Grant, Ordinance, or Contract or Reference to General Law under which "Special Franchise is Held, Possessed, or Enjoyed, and Statement of Any Condition, Obligation, or Burden Imposed upon Such Special Franchise or under which the Same is Enjoyed."

Lines formerly owned by the Fulton Elevated Railway Company.

Fulton street, from Vesta avenue to Williams place.
Williams place, from Fulton street to East New York avenue.
Snediker avenue, from East New York avenue to Eastern parkway.
Eastern parkway, from Snediker avenue to Market street.
Market street, from Eastern parkway to Liberty avenue.
Liberty avenue, from Market street to Ruby street.

The franchises for these lines were granted under the general law, chap. 140 of the Laws of 1850, general law, chap. 606 of the Laws of 1875, and the acts amendatory thereof and supplementary thereto.

The property and franchises of the Fulton Elevated Railway Company were sold under foreclosure and reorganization to the Kings County Elevated Railroad Company on July 6, 1899.

Line formerly of the Kings County Elevated Railway Company.

Fulton street, from Fulton ferry to Vesta avenue.

The franchise for the construction of this line was granted
475 to the Kings County Elevated Railway Company under general law, chap. 140 of the Laws of 1850, general law, chap. 606 of the Laws of 1875, and the acts amendatory thereof and supplementary thereto.

The property and franchises of the Kings County Elevated Railway Company were transferred by foreclosure and reorganization on July 6, 1899, to the Kings County Elevated Railroad Company.

Included in the above-named franchises and transfers is the right, not yet exercised, to construct an elevated railroad on the following streets and avenues:

Beginning on Manhattan avenue at its intersection with Newtown creek; running thence over, through and along Manhattan avenue to Commercial street; thence through and along Commercial street to Franklin street; thence over, through and along Franklin street to Kent —; thence along Kent avenue to Myrtle avenue.

The following are conditions, obligations or burdens imposed upon such special franchises or under which the same are enjoyed.

Such of the following provisions of general and special laws and of municipal ordinances, resolutions and regulations as are now valid and in force and applicable to such special franchises:

1. The provisions of the Greater New York charter, particularly secs. 579 to 588, both inclusive, regulating and restricting the use of electric wires, appliances, currents and conductors therefor.

2. The provisions of chap. 417 of the Laws of 1895, and the action of local authorities in pursuance thereof, requiring every street surface and elevated railroad company carrying on business within the city to transport free every policeman and fireman in the course of the performance of his official duties.

476 3. The provisions of chap. 825 of the Laws of 1896 requiring a permit for opening, otherwise disturbing or interfering with the surface of any street or avenue in the then city of Brooklyn without first obtaining a permit from the department of city works, and the payment of cost of street inspection therefor on work occupying over four hours.

4. The provisions of law requiring common carriers, including railroad corporations, to operate their railroads notwithstanding strikes of employees and notwithstanding such operation may be unprofitable.

5. The provisions of general statutes, including the penal code, limiting and regulating the number of hours per day and rate of compensation and times of making compensation to railroad employees.

6. Provisions of the constitution and of general laws requiring consents of local authorities and of abutting property owners, or in lieu thereof, the determination of commissioners approved by appellate

division, as a condition of constructing, maintaining or operating railroads, and the conditions, burdens and obligations imposed in such consents in accordance therewith.

7. Provisions of general and special law granting or in pursuance of which grants have been made of franchises to various other railroad companies to construct, maintain and operate railroads over various streets and portions of streets for which the Kings County Elevated Railroad Company has special franchises, or on streets or private property parallel or adjacent thereto, in particular the franchise and railroad operated by the Brooklyn Heights Railroad Company on Fulton street and elsewhere and of the Brooklyn Union Elevated Railroad Company in the borough of Brooklyn, the railroad and franchises of the Brooklyn City and Newtown Railroad Company and of the Coney Island and Brooklyn Railroad Company in the boroughs of Brooklyn and Queens.

477 This company asks leave to present a more full and detailed statement of the conditions, obligations and burdens imposed upon its special franchises or under which the same are enjoyed in such supplemental reports as it may hereafter make.

SCHEDULE D.

Statement of Assets and Liabilities June 30, 1899.

This company was not in existence June 30, 1899, having been incorporated in July, 1898, and on August 1, 1899, having succeeded to all the properties of the Kings County Elevated Railway Company and the Fulton Elevated Railway Company by foreclosure, said properties being in the hands of a receiver for a long time prior to said foreclosure.

CAPITAL STOCK—SCHEDULE E.

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	Amount.	Highest.	Lowest.	Present.
Common issued	60,000	$6,000,000	None		None.		
Preferred issued	28,000	2,800,000	None		None.		
Total	88,000	$8,800,000					

FUNDED DEBT—SCHEDULE F.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
First mortgage	Aug. 1, 1899	50 years.	$5,000,000	4 per cent.	Aug. 1 and Feb. 1			

479 *Statement of Receipts and Disbursements for Year Ending June 30, 1899.*

SCHEDULE G.

Receipts.

See explanation, page 6.

Disbursements.

See explanation, page 6.

SCHEDULE H.

None.

SCHEDULE J.

Statement in Detail of Rentals Received.

None.

SCHEDULE K.

Statement of Cost, Value on Basis of Reproduction and Assessment of Real Estate in Each Tax District.

* Name of tax district wherein located. (Give village if one and county.)	Cost of tangible real property included in "special franchise."	Value of tangible real property included in "special franchise" on basis of cost of reproduction.	Cost of real property not included in "special franchise."	Value of real property not included in "special franchise" on basis of cost of reproduction.	Last assessment of real property included in "special franchises." †	Last assessment of real property not in connection with "special franchise." †	Give total number of miles of tracks and sidings, or wires, cables or other conductors, or of main pipes and number of service pipes, as the case may be, in, upon, under or over streets and highways in each tax district
Borough of Brooklyn, city of New York.....	See explanation on page 6...	$1,382,973	Not ascertainable, see explanation, p. 6.....	.....	‡$2,460,000	$110,400	8.71 miles double track elevated structure.

* Name of each tax district in which assessments are made for real estate.
† Give facts in this column when such property has been separately assessed.
‡ Certiorari proceedings are pending to contest this assessment.

481 Detailed statement of shares of stock actually owned in other corporations which are taxable on their capital stock, and all other non-taxable securities owned.

SCHEDULE L.

None.

Details of Roads Owned and Leased.

SCHEDULE M.

Included in foregoing statements.

This schedule is applicable only to railroad corporations.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK, *City of New York, County of Kings,* } ss.:

T. S. Williams, sec'y and treas. of the Kings County Elevated R. R. Co., being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and, after careful examination of the same, declares them to be a true, full and correct statement of the property of said company.

[L. S.] T. S. WILLIAMS.

Subscribed and sworn to before me, this 30th day of October, 1899.

A. L. BROUGHAM,
Commissioner of Deeds for the City of New York, Residing in the Borough of Brooklyn.

482 Kings Co. Elevated R'w'y Co. (now Kings Co. Elevated R. R. Co.).

Disbursements of Earnings for the Year Ending June 30, 1899.

Operating expenses paid from earnings	$523,898 43
Maintenance " " " "	87,850 65
Reconstruction " " " "	.....
New construction (extension) paid from earnings..... (Number of miles of latter —)	.....
Total	$611,749 08

Itemize all sums paid in nature of local tax :

Percentage on gross earnings paid to municipality.....	.....
No. of car —: license per car $—.....	.....
Other licenses, tolls, etc.....	$20,166 66
Total amount paid for taxes, percentages, licenses, etc., etc.....	$20,166 66

STATE OF NEW YORK, *County of Kings,* } ss :

T. S. Williams, sec'y and treas. of the Kings Co. Elevated Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declare them to be true, to best of my knowledge and belief.

T. S. WILLIAMS.

Subscribed and sworn to before me, this 30th day of January, 1900.

V. W. WICKES,
Notary Public, Kings Co.

483 Form 12.

Supplemental Report of the Kings County Elevated R. R. Co. to the State Board of Tax Commissioners of the State of New York.

To —— —— :

Pursuant to the provisions of section 13, chapter 712, Laws of 1899, you are requested to make and file a supplemental report of the matters contained in the within blank, and return to this office on or before January 25, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

EXHIBIT 5 K.

Contract of August 23, 1897, between the trustees of the N. Y. and Brooklyn Bridge and the Kings Co. Elevated R. R. Co. Since the operation of the Kings Co. Elevated R. R. Co. by the Brooklyn Union Elevated R. R. Co. this contract has been in effect superseded by the contract described in Exhibit 5 B.

EXHIBIT 6 K.

Report of rapid transit commissioners prescribing route and method of construction of lines described in 3 K.

484 EXHIBIT 7 K.

Laws 1897, chap. 663.

Secs. 1 to 4 of this act, inclusive, reads as follows:

"SECTION 1. The trustees of the New York and Brooklyn bridge are hereby authorized and empowered to abolish all fares upon the railroadways of the said bridge, save and except as hereinafter provided.

SEC. 2. The said trustees may continue to maintain and to operate the present railroad on said bridge, and to charge such fares for the carriage of passengers thereon as they may deem fit, but not, however, in excess of the present rate.

SEC. 3. And the said trustees are hereby authorized and empowered to contract with any street surface or elevated railroad corporation or corporations, operating its or their roads in either the city of New York or the city of Brooklyn, respectively, permitting its or their carriage of passengers across the said bridge, but each and every contract therefor must provide that said corporation will not charge any fare in excess of, or additional thereto, the fare exacted by it from any passenger for one continuous ride upon any of its routes in either of the cities of New York or Brooklyn, as the case may be, so that the said route of said corporation or corporations operated across said bridge under said contract, so far as the exaction of a fare is concerned, shall be taken and deemed to be a part of the continuous route or one of the continuous routes of said railroad corporation or corporations whereon one fare is exacted so that no extra or additional fare shall be exacted by any such street surface or elevated railroad corporation from any passenger carried to or from the bridge and across the bridge in addition to the fare exacted from such passenger for carriage to and from the bridge only,
but nothing in this act shall be construed as preventing the
485 said trustees from making a proper charge to any railroad corporation for each car crossing said bridge.

SEC. 4. Within sixty days after the passage of this act, the said trustees shall prepare plans and specifications regulating the operation over said bridge of the cars of such corporation or corporations with whom it may contract, as such trustees shall deem best adapted to promote the public comfort and convenience and to subserve the purposes for which said bridge was constructed, and, except as otherwise provided by said trustees, such plans and specifications shall be in substantial conformity with the plans recommended to the said trustees by Virgil G. Bogue, George H. Thompson and Leffert L. Buck, expert engineers, by their report bearing date February eighth, eighteen hundred and ninety-seven. And said trustees shall also prepare such form of contracts and specifications thereunder as they shall deem best fitted for the public interests, regulating the operation of the said cars of the said corporation or corporations and the establishment of its route or their route upon said bridge,

and shall have power to exact such bond or obligation as they may deem proper for the faithful performance of any contract or contracts made with any and all of said corporations, as aforesaid."

EXHIBIT 1 B.

Laws of 1874, chap. 585, incorporated certain individuals under the name of the Brooklyn Elevated Silent Safety Railway Company.

It authorizes the corporation to construct, maintain and operate an elevated railway between the proposed terminus of the Brooklyn side of the East River suspension bridge and Woodhaven, in the town of Jamaica, on the following streets and avenues: Commencing at the crossing of Washington and Sand streets, along Washington street to York street; on York street to Hudson avenue; on
486 Hudson avenue to Park avenue; on Park avenue to Grand avenue; on Grand avenue to Lexington avenue; on Lexington avenue to Ralph avenue; on Ralph avenue to Marion street; on Marion street to Broadway; on Broadway to Fulton avenue; on Fulton avenue to and through Woodhaven, in the town of Jamaica, or on such streets and avenues as may be named by the mayor and common council of the city of Brooklyn as being more suitable for carrying out the objects contemplated in the erection of said elevated railway.

The use of the streets for the purposes authorized shall be considered a public use.

The corporation was authorized to construct turnouts, sidings, stations, platforms, stairways, etc., and to convey passengers, mails and merchandise in cars to be propelled by steam or other motive power.

The rate of fare should not exceed five (5) cents for the first two (2) miles, and an additional sum of one (1) cent per mile for any additional distance.

The act further described in detail the method of construction which should be followed.

The corporation was authorized, in addition, to construct a branch commencing at Hudson avenue and York street, running along Hudson avenue to Plymouth street, over Plymouth street to Main street, along Main street to Water street, along Water street to Fulton ferry.

The corporation was authorized to condemn all necessary property, and is required to commence the construction of its road within two (2) years and to complete it within three (3) years, and upon failure to do so should forfeit the rights acquired under this act.

EXHIBIT 2 B.

Laws 1875, chap. 422, amended chap. 585 of Laws 1874 (Exhibit 1 B) by changing the name to Brooklyn Elevated Railway Company.

487 The act also amended the provisions with reference to the method of construction to be adopted.

Exhibit 3 B.

Laws 1885, chap. 539, Amended Laws 1874, chap. 585 (Exhibit 1 B), by providing that the rate of fare shall not exceed five (5) cents for each passenger between the hours of half-past five and half-past eight in the forenoon, and the hours of half-past four and half-past seven in the afternoon, and at all other hours the fare shall not exceed ten (10) cents.

This act further provided that the railroad easterly of Schenck avenue, to and through Woodhaven avenue, should be laid only upon the surface during five (5) years next after the passage of that act.

Exhibit 4 B

Is printed in full in the application of Brooklyn Union Elevated Railroad Company for a writ of certiorari herein.

Exhibit 5 B.

Contract of August 23, 1897, between the trustees of the New York and Brooklyn Bridge and the Brooklyn Elevated Railroad Company, with modification of June 23, 1888, made by John L. Shea, commissioner of bridges; Frederick Uhlmann, receiver of the Brooklyn Elevated Railroad Company, and the Brooklyn Elevated Railroad Company, for the operation by the railroad company of the bridge railroad and for the operation across the bridge upon the bridge railroad of the cars of the railroad company.

The contract as modified provided that the railroad company should operate the bridge railroad and should charge five cents per round trip, or three cents for single passage, and that it would pay five per cent. of the receipts therefrom if over $10,000 and
488 under $20,000; 7½ if over $20,000 and under $40,000; 10 per — if over $10,000 and under $60,000; 12½ if over $60,000 and under $80,000; 15 per cent. if over $80,000 and under $100,000; 20 per cent. if over $100,000 and up to $150,000; 25 per cent. on all amounts exceeding $150,000. Provided, however, that the railroad company should be responsible for any loss incurred in the operation of the bridge railroad. That the railroad company should operate the railroad under the direction of the bridge commissioner and keep the same in repair, should defend all damage actions; should pay, in addition to the rental mentioned, the sum of $20,306.28, as rent for the bridge railroad and power-house, and that no additional fare should be charged to any passengers upon the elevated railroad who desire to cross the bridge, and all passengers should be carried for the same fare.

The contract further provided that for all cars of the railroad company operated across the bridge the company should pay a rent of ten cents for each round trip and that such payment should amount to at least $250 a day. The company to pay all expense in the construction made necessary by this contract and any additional

construction became the property of the city as soon as erected. The company was required to furnish a bond in the sum of $250,000, and could charge no fare for transporting its own passengers across the bridge.

This contract is to be in force for ten years and thereafter until terminated by either party, but may be terminated by the mayor of the city of New York and the president of the borough of Brooklyn prior to the expiration of such ten years.

EXHIBIT 6 B.

Decision of rapid transit commissioners appointed under
489 Laws of 1875, chap. 606, fixing routes and detailed method of construction and operation of Sea Side and Brooklyn Bridge R. R. Co. upon the streets mentioned in the evidence of T. S. Williams which refers to this exhibit number.

EXHIBIT 7 B.

Resolution of Common Council of February 20, 1891,

Authorizing construction on streets named in evidence of T. S. Williams which refers to this exhibit number.

EXHIBIT 8 B.

Resolution of Common Council of July 12, 1886,

Authorizing Union Elevated R. R. Co. to construct road on streets named in evidence of T. S. Williams which refers to this exhibit number in accordance with details of construction prescribed.

EXHIBIT 9 B.

Report of rapid transit commissioners prescribing routes, methods of construction and details of operation, amount of bond, etc., for Union Elevated.

EXHIBIT 10 B.

Consent of highway commissioners of town of New Lots to construction of elevated R. R. on streets named in evidence of T. S. Williams which refers to this exhibit number.

490 EXHIBIT 4, C. I. & G.

Report of the Coney Island and Gravesend Railroad Company to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1899.

OFFICE OF THE STATE
BOARD OF TAX COMMISSIONERS,
ALBANY, *October 1st*, 1899.

SIR: The following forms, prepared in conformity with the re-

quirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899, a copy of which is inclosed herewith.

It is requested that you complete and forward such report within thirty days, as required by that act.

Very respectfully,

STATE BOARD OF TAX COMMISSIONERS.

Extract from law relating to taxation of special franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph
491 lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

492 SCHEDULE A.

Title of company, the Coney Island and Gravesend Railroad Company.

General offices at No. 168 Montague street, Brooklyn, N. Y.

Date of close of fiscal year, June 30.

For information concerning this report, address T. S. Williams, No. 168 Montague street, Brooklyn, N. Y.

Officers of the Company, with Address.

President, Clinton L. Rossiter, No. 168 Montague street, Brooklyn, N. Y.

Vice-president, none.

Secretary and treasurer, T. S. Williams, No. 168 Montague street, Brooklyn, N. Y.

General manager, none.

The special franchise of the Coney Island and Gravesend Railroad Company consists of the right, privilege and franchise to operate a street surface railroad upon certain streets, avenues and highways in the borough of Brooklyn, city of New York, and of its tangible real property located therein.

A lease was heretofore executed by the Coney Island and Gravesend Railroad Company of all its property, rights, privileges and franchises to the Brooklyn Heights Railroad Company, by virtue whereof the Brooklyn Heights Railroad Company has since been in possession of and has operated all the property, rights, privileges and franchises of the Coney Island and Gravesend Railroad Company, and whereby the Brooklyn Heights Railroad Company has assumed and agreed to pay all taxes assessed upon or on account of the property, rights, privileges and franchises of the Coney Island and Gravesend Railroad Company.

493 In accordance with law and with the opinion of Hon. J. Newton Fiero to the State Board of Tax Commissioners, the special franchise of the Coney Island and Gravesend Railroad Company is assessable to the Brooklyn Heights Railroad Company, and no part thereof should be assessed to the Coney Island and Gravesend Railroad Company.

The Coney Island and Gravesend Railroad Company hereby adopts and makes a part of this report all matters in the report of the Brooklyn Heights Railroad Company herewith presented relating to its special franchise and will make such further report promptly as may be desired by the State Board of Tax Commissioners.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK, }
City of New York, County of Kings, } ss:

T. S. Williams, secretary of the Coney Island and Gravesend Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company on the first day of October, 1899, to the best of my knowledge and belief.

[L. S.] T. S. WILLIAMS.

Subscribed and sworn to before me, this 30th day of October, 1899.

A. L. BROUGHAM,
Commissioner of Deeds for the City of New York,
Residing in the Borough of Brooklyn.

494 DEFENDANT'S EXHIBIT No. 1.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1899.

1899.

Gross earnings from operation		$1,292,801 51
Operating expenses (excluding all taxes)		829,298 54
Net earnings from operation		463,502 97
Income from other sources than operation		25,862 90
Gross income from all sources		489,365 87
Deductions from income, as follows:		
Interest on funded debt	$86,823 30	
Taxes—		
On property used in operation of road	23,460 00	
On earnings and capital stock	20,107 99	
Other than above	6,849 99	
Rentals	479,653 57	
		536,894 85
Net income from all sources, deficit		47,528 98
Net income, as previously reported, for preceding quarters in this fiscal year		255,825 98

Operating cost, 64.14 per cent. of earnings (excluding all taxes).

Operating cost, 68.04 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

495 DEFENDANT'S EXHIBIT No. 2.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending June 30, 1899.

1899.

Gross earnings from operation		$2,840,174 04
Operating expenses (excluding all taxes)		1,691,948 24
Net earnings from operation		1,148,225 80
Income from other sources than operation		57,055 09
Gross income from all sources		1,205,280 89
Deductions from income, as follows:		
Interest on funded debt	$84,289 44	
Taxes—		
On property used in operation of road	62,855 70	
On earnings and capital stock	37,779 89	
Other than above	7,593 29	
Rentals	827,892 25	
		940,410 57
Net income from all sources		264,870 32
Net income, as previously reported, for preceding quarters in this fiscal year		188,297 00

Operating cost, 59.56 per cent. of earnings (excluding all taxes).

Operating cost, 63.38 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

496 DEFENDANT'S EXHIBIT NO. 3.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending September 30, 1899.

1899.

The report of the Brooklyn Heights for the quarter ending September 30th includes—		
Gross earnings from operation		$2,775,838 36
Operating expenses (excluding all taxes)		1,790,186 14
Net earnings from operation		985,652 22
Brooklyn Heights—income from other sources than operation		86,293 82
Brooklyn City—gross income from all sources		1,071,946 04
Brooklyn, Queens County and Suburban:		
Deductions from income as follows:		
Nassau Electric—interest on funded debt	$3,566 41	
Brooklyn Union Elevated, Sea View, Sea Beach, Prospect Park and Coney Island:		
Taxes—		
On property used in operation of road	117,197 92	
On earnings and capital stock	36,852 59	
Other than above	6,384 03	
Coney Island and Gravesend—rentals	831,260 89	
		995,261 84
497 Net income from all sources		76,684 20
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost, 64.40 per cent. of earnings (excluding all taxes).

Operating cost, 70.27 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

DEFENDANT'S EXHIBIT No. 4.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending December 31, 1899.

1899.

Gross earnings from operation		$2,804,915 10
Operating expenses (excluding all taxes)		1,799,987 47
Net earnings from operation		1,004,927 63
Income from other sources than operation		73,306 46
Gross income from all sources		1,078,234 09
Deductions from income, as follows:		
Interest on funded debt	$3,548 45	
Taxes—		
On property used in operation of road	136,216 53	
On earnings and capital stock	36,052 46	
Other than above	5,269 98	
Rentals	880,094 49	
		1,061,181 91
Net income from all sources		17,052 18
Net income, as previously reported, for preceding quarters in this fiscal year		76,684 20

498 Operating cost, 64.17 per cent. of earnings (excluding all taxes).

Operating cost 70.50 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

DEFENDANT'S EXHIBIT No. 5.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1900.

1900.

Gross earnings from operation		$2,596,194 78
Operating expenses (excluding all taxes)		1,679,275 25
Net earnings from operation		916,919 53
Income from other sources than operation		75,530 12
Gross income from all sources		992,449 65
Deductions from income, as follows:		
Interest on funded debt	$85,950 14	
Taxes—		
On property used in operation of road	137,128 62	
On earnings and capital stock	33,452 09	
Other than above	5,269 98	
Rentals	893,154 49	
		1,074,955 32
Net income from all sources (deficits)		82,505 67
Net income, as previously reported, for preceding quarters in this fiscal year		93,736 38

499 Operating cost 64.67 per cent. of earnings (excluding all taxes).

Operating cost 71.45 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock.

DEFENDANT'S EXHIBIT No. 6.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending June 30, 1900.

1900.

Gross earnings from operation	$3,091,073 61
Operating expenses (excluding all taxes)	1,779,044 52
Net earnings from operation	1,312,029 09
Income from other sources than operation	85,357 87
Gross income from all sources	1,397,386 96

Deductions from income, as follows:		
Interest on funded debt	$3,439 74	
Taxes—		
On property used in operation of road	139,003 32	
On earnings and capital stock	38,594 88	
Other than above	5,298 40	
Rentals	946,556 57	
		1,132,892 91
Net income from all sources		264,494 05
Net income, as previously reported, for preceding quarters in this fiscal year		11,230 71

Operating cost 57.55 per cent. of earnings (excluding all taxes.)

500 Operating cost 63.47 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

DEFENDANT'S EXHIBIT No. 7.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending September 30, 1900.

1900.

Gross earnings from operation		$3,101,714 04
Operating expenses (excluding all taxes)		1,723,535 33
Net earnings from operation		1,378,178 71
Income from other sources than operation		93,703 20
Gross income from all sources		1,471,881 91
Deductions from income, as follows:		
Interest on funded debt and real estate mortgages	$3,422 53	
Taxes—		
On property used in operation of road	137,272 52	
On earnings and capital stock	37,354 17	
Other than above	6,182 98	
Rentals	*974,362 87	
		1,158,595 07
The operations of the Kings County Elevated R. R. are not included in figures for 1899.		
Net income from all sources		313,286 84
Net income, as previously reported, for preceding quarters in this fiscal year		

501 Operating cost 55.57 per cent. of earnings (excluding all taxes).

Operating cost 61.40 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

DEFENDANT'S EXHIBIT No. 8.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending December 31, 1900.

1900.

Gross earnings from operation		$2,833,681 03
Operating expenses (excluding all taxes)		1,722,378 96
Net earnings from operation		1,111,302 07
Income from other sources than operation		74,611 70
Gross income from all sources		1,185,913 77
Deductions from income as follows:		
Interest on funded debt and real estate mortgages	$3,360 92	
Taxes—		
On property used in operation of road	128,768 72	
On earnings and capital stock	38,982 92	
Other than above	6,355 00	
Rentals	974,619 88	
		1,152,087 44
Net income from all sources		33,826 33
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost, 59.28 per cent. of earnings (excluding all taxes).

502 Operating cost, 65.27 per cent. of earnings (including taxes on all property actually used in operation of road, and on earnings and capital stock).

Defendant's Exhibit No. 9.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Year Ending December 31, 1899.

1899.

Includes Brooklyn Union Elevated, Nassau Electric and Prospect Park and Coney Island.

Gross earnings from operation		$10,664,800 79
Operating expenses (excluding all taxes)		6,848,425 12
Net earnings from operation		3,816,375 67
Income from other sources than operation		263,055 83
Gross income from all sources		4,079,431 50
Deductions from income, as follows:		
Interest on funded debt	$244,465 30	
Taxes—		
On property used in operation of road	366,261 25	
On earnings and capital stock	141,935 16	
Other than above	44,851 61	
Rentals	3,045,009 06	
Interest on floating debt and real estate mortgages	4,436 23	
Discount	12,202 92	
		3,859,161 53
Net income from all sources		$220,269 97
Net income, as previously reported, for preceding quarters in this fiscal year		

503 Operating cost, 81.165625 per cent. of earnings (excluding all taxes).

Operating cost, 89.93375 per cent. of earnings (including taxes on all property actually used in operation of road, and on earnings and capital stock).

Brooklyn Heights Railroad Company.

General Balance Sheet, December 31, 1899, *as Reported to State Board of Railroad Commissioners.*

Assets.

Cost of road and equipment	$467,857 85
Stocks and bonds of other companies	.....
Other permanent investments	.....
Supplies on hand	424,775 06
Accrued interest	.....
Due by agents of this company on account of traffic	.....
Due by others (not agents of this company) on account of traffic	.....
Due by companies and individuals (on open accounts other than traffic)	986,242 45
Cash on hand	167,190 18
Brooklyn City R. R. construction account	4,933,742 51
Betterments	69,494 12
Prepaid insurance	34,845 79
Bills receivable	27,333 34
Profit and loss (deficiency)	.....
	$7,111,481 30

Liabilities.

Capital stock, common	$200,000 00
Capital stock, preferred	.....
Funded debt	250,000 00
504 Loans and bills payable	.....
Interest on funded debt due and accrued	3,623 97
Dividends unpaid	.....
Due for wages and supplies and construction	674,691 61
Due companies and individuals (on open account)	155,255 19
B. R. T. Co.'s equity in B. construction acc't	4,740,176 79
Rentals accrued	$13,081 46
Real estate mortgages	875 00
Taxes accrued	241,477 28
Profit and loss (surplus)	.....
	$7,111,481 30

DEFENDANT'S EXHIBIT No. 10.

Brooklyn Heights Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Year Ending December 31, 1900.

Included in this report are the September and December quarterly reports of the Coney Island and Gravesend Railway Company.

1900.

Gross earnings from operation		$11,644,451 63
Operating expenses (excluding all taxes)		6,923,689 06
Net earnings from operation		4,720,762 57
Income from other sources than operation		329,202 89
Gross income from all sources		5,049,965 46
Deductions from income, as follows:		
Interest on funded debt	$16,173 33	
505 Taxes—		
On property used in operation of road	542,173 18	
On earnings and capital stock	148,601 93	
Other than above	23,106 36	
Rentals	3,788,693 81	
		4,518,748 61
Net income from all sources		531,216 85
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost 81.5425 per cent. of earnings (excluding all taxes.)
Operating cost 87.9225 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

Brooklyn Heights Railroad Company.

General Balance Sheet, December 31, 1900, *as Reported to State Board of Railroad Commissioners.*

Assets.

Cost of road and equipment	$462,442 50
Stocks and bonds of other companies	.....
Other permanent investments	....
Supplies on hand	542,955 55
Accrued interest	.....

Due by agents of this company on account of traffic	.....
Due by companies and individuals (on open accounts other than traffic)	277,587 99
Cash on hand	338,130 23
Betterments	85,258 27
506 Uncarned insurance	53,38[illegible] 52
Due from lessor Co.'s acc't construction	.....
Expenditures	6,406,546 47
Profit and loss (deficiency)	.....
	$8,166,309 53

Liabilities.

Capital stock, common	$200,000 00
Capital stock, preferred	.....
Funded debt	250,000 00
Loans and bills payable	.....
Interest on funded debt due and accrued	3,100 00
Dividends unpaid	.....
Due for wages and supplies Due companies and individuals (on open accounts)	468,377 00
Real estate mortgages	18,875 00
Interest on real estate mortgages accrued	364 79
*Rentals accrued	873,683 67
Taxes accrued	500,713 31
B. R. T. equity in construction acc'ts of lessor Co.'s	5,829,082 59
Profit and loss (surplus)	22,113 17
	$8,166,309 53

507 DEFENDANT'S EXHIBIT No. 11.

Brooklyn Heights.

(Date of charter, April 1, 1887.)

For history of organization, etc., see report of 1898.

Included in this report are the physical statistics and result of operations of the following roads, which are leased to this company:

Brooklyn City.

Brooklyn, Queens County and Suburban.

*Rentals include interest and rentals accruing to Brooklyn Rapid Transit Company as owner of stocks and bonds

* Brooklyn Union Elevated.
* Nassau and leased lines.
† Prospect Park and Coney Island and leased lines.
Sea Beach.

The Nassau Electric railroad was leased April 1, 1899, for one year, at an annual rental of $150,000 and payment of interest, taxes and insurance.

The Brooklyn Union Elevated railroad was leased April 1, 1899, for one year, at an annual rental of $100,000, and payment of interest, taxes and insurance.

The Prospect Park and Coney Island railroad was leased June 17, 1899, for 999 years at an annual rental of $40,000.

The Brooklyn, Queens County and Suburban railroad was leased July 1, 1898, for one year, rental being amount of interest, taxes and insurance.

508 *Capital Stock and Funded Debt.*

Capital stock.

	Common.	
	Number of shares.	Total par value.
Authorized by law or charter, issued on account of construction and now outstanding	2,000	$200,000
Number of stockholders		14

Funded debt.

Designation of lien.	Date.	Term, years.	Interest.		Amount authorized.	Amount outstanding.	Cash realized on amount outstanding.
			Rate.	When payable.			
			p. c.				
First mortgage	April, 1891	50	5	Apr. & Oct.	$250,000	$250,000	$250,000

Per mile of track owned	1.266 miles.
Capital stock outstanding	$157,978 00
Funded debt outstanding	197,472 00
Cash realized on same	197,472 00

* For period from April 1 to June 30, 1899.
† For period from June 18 to June 30, 1899.

Cost of Road and Equipment.

Road.	Additions or betterments during year ending June 30, 1899.	Total cost of road and equipment up to June 30, 1899.
Right of way	$547 50	
Total cost of road	$547 50	$445,873 43
Equipment.		
Horses and rolling stock other than cars	*$340 00	
Total cost of equipment	*$340 00	$19,524 42
Grand total cost of road and equipment	$207 50	$465,397 85

Cost of track per mile owned	$352,190 71
Cost of equipment per mile of track owned	15,422 13
Cost of road and equipment per mile of track owned	367,612 84

509 *Details of Additions or Betterments During the Year.*

Land purchased in village of Flushing, N. Y.	$547 50
Sale of horses	*340 00
	$207 50

Additions and Betterments on Leased Lines.

Track and roadway construction and overhead construction	$692,045 61
Buildings and fixtures	17,159 91
Power station equipment	53,658 01
Car equipment	257,124 19
Miscellaneous equipment	4,081 57
	$1,024,069 29
Less credit—Sale of old material	56,306 01
Total	$967,763 28
Balance due from lessor companies, June 30, 1898	4,125,356 79
Total	$5,093,120 07

* Credit.

Amount paid by lessor companies during the year...	164,835 83
Amount due from lessor companies, June 30, 1899	$4,928,284 24

Income Account for Year Ending June 30, 1899.

Gross earnings from operation.....			$7,237,755 00
Less operating expenses (excluding all taxes).....			4,416,117 00
Net earnings from operation.....			$2,821,638 00
Income from other sources, as follows, viz:			
Advertising		$55,420 31	
Rental of track.....		27,316 53	
Sale of power or electric lighting.....		47,164 19	
Rental of buildings or property.....		37,315 27	
Interest.....		12 77	
Miscellaneous		7,463 49	
			174,692 56
Gross income from all sources.....			$2,996,330 56
Deduction from income, as follows, viz:			
Interest on funded debt, due and accrued.....	$12,500 00		
510 Interest on floating debt, due and accrued	9,069 81		
		$21,569 81	
Rentals..... ...		2,268,339 15	
Taxes on property used in operation of road.....	$130,835 70		
Taxes on earnings and capital stock	103,295 64		
Taxes other than above.....	19,122 94		
		253,254 28	
			2,543,163 24
Surplus for year ending June 30, 1899.....			$453,167 32
General income account:			
Surplus up to June 30, 1898.....			18,387 45
			$471,554 77
Amount turned over to the Brooklyn Rapid Transit Company in pursuance of terms of Brooklyn rapid transit mortgage			471,554 77

Detailed Statement of Rentals.

Name of lessor road.	Total amount of rental paid by lessee.
Brooklyn City Railroad Company	$1,567,715 43
Nassau Electric Railroad Company	188,519 48
Brooklyn, Queens County and Suburban Railroad Company	328,865 01
Sea Beach Railway Company	27,714 79
Brooklyn Union Elevated Railroad Company	154,080 00
Prospect Park and Coney Island Railroad Company	1,444 44
Total amount of rentals deducted from income	$2,268,339 15

Analysis of Gross Earnings and Operating Expenses.

Earnings.

Cash fares		$7,205,049 12
Mail	$17,690 45	
Express	15,015 43	
		32,705 88
Total gross earnings		$7,237,755 00

511 Operating expenses.

General expenses:

Salaries of general officers and clerks	$108,502 71	
Miscellaneous expenses, general office	9,722 98	
Insurance	15,855 75	
Law expenses	86,678 88	
Injuries and damages	529,212 29	
Contingent expenses	76,101 61	
		$826,074 22

Conducting transportation:

Car service	$1,967,381 05	
Car house expenses	170,325 33	
Operation of power-house	181,945 37	
Fuel	269,613 22	
Rents for tracks, yards and terminals	86,442 51	
Hired power	22,562 53	
		2,698,270 01

Maintenance of way and structures:		
Maintenance, repairs and renewals of track and roadway construction	$105,233 71	
Maintenance and repairs of overhead construction	83,366 03	
Maintenance, repairs and renewals of buildings	28,407 36	
Removal of snow and ice	45,630 45	
		262,637 55
Maintenance of equipment:		
Repairs of cars	$257,283 73	
Repairs of electrical equipment of cars	314,252 12	
Repairs of steam plant	47,720 97	
Repairs of electrical plant	4,803 54	
Repairs of tools and machinery	448 65	
Miscellaneous expenses	4,626 21	
		629,135 22
Total operating expenses		$4,416,117 00

Operating cost, 61.01 per cent. of earnings (excluding taxes).

Operating cost, 64.25 per cent. of earnings (including taxes on all property actually used in operation of road on earnings and capital stock).

Operating cost, 12.945 cents per car mile (excluding taxes).

512 *Cash Statement.*

Receipts.

Cash on hand June 30, 1898	$348,047 71
Cash fares	7,211,963 96
Brooklyn rapid transit construction advance	881,077 54
Brooklyn City railroad construction advance	10,000 00
Mail	11,323 33
Express	11,627 93
Advertising	39,931 22
Bills payable (temporary loans)	640,000 00
Bills receivable	245,280 79
Open accounts	569,899 83
Sale of old material	79,293 72
Sea View railroad account construction	419,917 58
Miscellaneous sources	22,219 74
	$10,490,589 35

Disbursements.

Operating expenses	$4,472,442 80
Taxes on property used in operation	155,498 69
Taxes on earnings and capital stock	75,981 39
Taxes other than above	16,096 33
Interest on funded debt	12,500 00
Other interest	8,692 14
Rentals	2,087,179 09
Insurance	46,642 00
Construction, betterments and equipment	1,260,072 10
Loans	740,000 00
Brooklyn Rapid Transit Company	200,000 00
Bills receivable	280,000 00
Advances, account other companies	504,966 16
Open accounts	192,964 77
Cash on hand June 30, 1899	437,553 88
	$10,490,589 35

General Balance Sheet, June 30, 1899.

Assets.

Cost of road	$445,873 43	
Cost of equipment	19,524 42	
		$465,397 85
Current assets as follows, viz.:		
Cash on hand	$437,553 88	
Bills receivable	38,213 21	
513 Open accounts	245,371 42	
Material and supplies on hand	152,370 93	
Additions and betterments on leased lines	4,928,284 24	
Prepaid insurance	37,985 04	
		5,839,778 72
		$6,305,176 57

Liabilities.

Capital stock		$200,000 00
Funded debt		250,000 00
Current liabilities as follows, viz.:		
Interest on funded debt, accrued	$3,125 00	
Other interest due and accrued	517 72	
Rentals accrued	613,748 90	

Taxes accrued	196,076 25	
Brooklyn Rapid Transit Company's equity in Brooklyn City's construction account	4,730,476 79	
Accounts payable	292,231 91	
Sundries, mortgage indebtedness	19,000 00	
		5,855,176 57
		$86,305,176 57

Traffic and Mileage Statistics.

Number of passengers carried, including transfers	158,260,948
Number of transfers	33,056,128
Number of transfer points	137
Passenger car mileage	33,943,920
Mail car mileage	171,971
Total car mileage	34,115,891
Maximum speed, per hour, miles	6, 8, 10
Rate of fare per passenger	3, 5 and 10 cents.
Cars are run every	6 seconds.
Average number of employees (including officials) during year	7,000
Aggregate amount of salaries and wages paid them	$3,059,134 42
Power houses	6
Car houses	16
Horses owned	115
Road constructed, reconstructed and opened for business during the year, miles	52.70
514 Total assessed value of real estate and personal property of company, including lessor companies	$16,108,857 00
Steam railroad crossings at grade	42
Steam railroad crossings over grade	8
Steam railroad crossings under grade	3

Passenger cars are heated and lighted by electricity.

Characteristics of Road and Equipment.

Track.	Miles owned (cable).	Miles leased.	Miles operated under trackage rights.	Total miles operated.
Single track, main line	.590	{ *29.82 { †197.11	1.53	229.05
Single track, main line, operated by horses	.....	.72	.....	.72
Total single track	.590	227.65	1.53	229.77
Second track, main line	.590	{ ‡28.12 { †191.11	.....	220.66
Second track, main line, operated by horses	.....	.71	.84	.71
Total second track	.590	219.94	.....	221.37
Sidings and turnouts	.086	{ ‡12.65 { †11.85	.....	24.586
Total sidings and turnouts	.086	24.50	.....	24.586
Grand total, tracks, sidings and turnouts	1.266	472.09	2.37	475.726
Laid with steel rail	1.266	472.09	2.37	475.726

* Electric and steam. † Electric. ‡ Steam.

Weight of rails per yard—steel, maximum, 98½ lbs. Gauge of track, 4 feet 8½ inches. Ballasted with paving stone, asphalt and brick.

Equipment.	Number owned (cable).	Number leased.		Total number.		Number equipped with fenders.
		Motors.	Other than motors.	Motors.	Other than motors.	
Box cars	8	1,628	{ *5 { †92	1,628	{ *5 { †100	1,733
Open cars	6	1,647	.....	1,647	6	1,653
Express cars	....	9	.....	9	....	9
Freight and service cars	.....	133	*12	133	*12	145
Snow plows	....	40	‡18	40	‡18	58
Sweepers	....	39	....	39	.....	39
Total	14	3,496	127	3,496	141	3,637

* Miscellaneous. † Cable. ‡ Horse.

515 *Track Mileage of Lines Owned and Leased.*

Line.	Owned by	Miles owned.	Miles leased.
Montague street	Brooklyn Heights Railroad Co.	1.18	
Sidings	Brooklyn Heights Railroad Co.	.086	
Nostrand avenue	Brooklyn City Railroad Co.		13.459
Crosstown	Brooklyn City Railroad Co.		11.909
Greene and Gates avenues	Brooklyn City Railroad Co.		7.444
Hamilton avenue	Brooklyn City Railroad Co.		2.899
Court street	Brooklyn City Railroad Co.		2.982
Fulton street	Brooklyn City Railroad Co.		11.508
Flushing and Graham avenues	Brooklyn City Railroad Co.		8.884
Union avenue	Brooklyn City Railroad Co.		4.408
Lorimer street	Brooklyn City Railroad Co.		3.555
Myrtle avenue	Brooklyn City Railroad Co.		8.679
Flatbush avenue	Brooklyn City Railroad Co.		15.733
Third avenue	Brooklyn City Railroad Co.		12.606
Putnam avenue and Halsey street.	Brooklyn City Railroad Co.		7.179
Grand street	Brooklyn City Railroad Co.		8.033
Greenpoint	Brooklyn City Railroad Co.		6.875
Tompkins avenue	Brooklyn City Railroad Co.		6.182
Bushwick avenue	Brooklyn City Railroad Co.		4.509
Flushing extension	Brooklyn City Railroad Co.		12.056
Second avenue	Brooklyn City Railroad Co.		4.455
Bensonhurst	Brooklyn City Railroad Co.		9.321
Meeker avenue	Brooklyn City Railroad Co.		2.928
Bowery bay	Brooklyn City Railroad Co.		12.470
Richmond hill	Brooklyn City Railroad Co.		8.144
Cypress hills	Brooklyn City Railroad Co.		2.636
Lutheran cemetery	Brooklyn City Railroad Co.		2.628
Ridgewood depot (terminal tracks, etc.)	Brooklyn City Railroad Co.		1.370
Calvary cemetery	Brooklyn City Railroad Co.		2.965
Furman street	Brooklyn City Railroad Co.		2.167
Oakland street	Brooklyn City Railroad Co.		.279
Nassau avenue	Brooklyn City Railroad Co.		1.701
Meserole avenue	Brooklyn City Railroad Co.		.557
Crosstown annex	Brooklyn City Railroad Co.		.322
Avenue C	Brooklyn City Railroad Co.		1.250
Sidings	Brooklyn City Railroad Co.		3.507
Sea beach	Sea Beach Railroad Co.		13.85
Broadway	Brooklyn, Queens Co. & Sub. R. R. Co.		8.60
East New York terminal	Brooklyn, Queens Co. & Sub. R. R. Co.		.70
Jamaica	Brooklyn, Queens Co. & Sub. R. R. Co.		12.00
Cypress hills	Brooklyn, Queens Co. & Sub. R. R. Co.		3.89
Reid avenue	Brooklyn, Queens Co. & Sub. R. R. Co.		4.00
Sumner avenue	Brooklyn, Queens Co. & Sub. R. R. Co.		3.60
Ralph avenue	Brooklyn, Queens Co. & Sub. R. R. Co.		2.86
Metropolitan avenue	Brooklyn, Queens Co. & Sub. R. R. Co.		10.05

Track Mileage of Lines Owned and Leased—Continued.

Line.	Owned by	Miles owned.	Miles leased.
Sidings	Brooklyn, Queens Co. & Sub. R. R. Co.		.17
Canarsie	Nassau Electric Railroad Co.		16.52
Marcy avenue	Nassau Electric Railroad Co.		18.48
Douglass street	Nassau Electric Railroad Co.		9.40
Church avenue	Nassau Electric Railroad Co.		12.28
Fort Hamilton	Nassau Electric Railroad Co.		6.42
Eighty-sixth street	Nassau Electric Railroad Co.		3.68
Fifth avenue	Nassau Electric Railroad Co.		8.04
Butler street	Nassau Electric Railroad Co.		3.48
Seventh avenue	Nassau Electric Railroad Co.		3.46
Fifteenth street	Nassau Electric Railroad Co.		2.98
Hicks street	Nassau Electric Railroad Co.		1.68
Bergen street	Nassau Electric Railroad Co.		9.13
Adams street	Nassau Electric Railroad Co.		3.42
Vanderbilt avenue	Nassau Electric Railroad Co.		6.14
West End division	Nassau Electric Railroad Co.		10.92
516 Park avenue	Nassau Electric Railroad Co.		7.18
Surf avenue	Nassau Electric Railroad Co.		6.32
Sidings	Nassau Electric Railroad Co.		6.60
Prospect Park and Coney Island Div.	Prospect Park & Coney Isl'd R. R. Co.		24.97
Elevated division	Brooklyn Union Elevated Railroad Co.		45.62
Operated under trackage rights:			
Jay street	Coney Island and Brooklyn R. R. Co.	1.15	
Washington street	Coney Island and Brooklyn R. R. Co.	.45	
Ninth avenue	Coney Island and Brooklyn R. R. Co.	.53	
Front, Fulton and Water streets.	Coney Island and Brooklyn R. R. Co.	.34	
			2.37
Total leased			474.46
Miles of track owned and leased			1.266
Grand total track owned, leased and operated			475.726

Salaries, Wages, etc., of Officers and Other Employees.

Officers and clerks.

	Annual salary.
General officers	$44,960 74
Office clerks	63,541 97

Other employees.

	Average number of hours on duty per day.	Wages per day.
Conductors	10	$2 00
Drivers	10	2 00
Motormen	10	2 00
Starters	10	1 75 to 2 50
Watchmen	10	1 50 to 2 00
Switchmen	10	1 25 to 1 50
Roadmen	10	2 50
Hostlers	10	1 50
Linemen	10	1 75 to 4 00
Engineers	8	2 75 to 6 50
Firemen	10	1 25 to 1 75
Electricians	10	1 50 to 3 57½
Machinists and mechanics	10	1 50 to 4 00
Trackmen	10	1 25 to 4 00
Truck drivers	10	1 50 to 2 25

517 *Recapitulation of Accidents.*

	Injured.	Killed.	Total.
Passengers	16	7	22
Employees	9	5	14
Others	33	29	62
Total	58	41	99

Total paid for injuries and damages caused by accidents:

Paid by the company $529,212 29

Officers of the Company.

Name.	Title.	Official address.
Clinton L. Rossiter	President	168 Montague street, Brooklyn, N. Y.
Timothy S. Williams	Sec. and treas.	168 Montague street, Brooklyn, N. Y.
Ira A. McCormick	Superintendent	168 Montague street, Brooklyn, N. Y.

Directors of the Company.

Name.	Residence.
C. L. Rossiter	Brooklyn, N. Y.
Anthony N. Brady	Albany, N. Y.
John G. Jenkins	Brooklyn, N. Y.
Henry Seibert	Brooklyn, N. Y.
Theo. F. Jackson	Brooklyn, N. Y.
William C. Bryant	Brooklyn, N. Y.
David H. Valentine	Brooklyn, N. Y.
John D. Keiley	Brooklyn, N. Y.
Seth L. Keeney	Brooklyn, N. Y.
H. C. Duval	Brooklyn, N. Y.
C. D. Meneely	Brooklyn, N. Y.
John Englis	Brooklyn, N. Y.
T. S. Williams	Brooklyn, N. Y.

Title of company, Brooklyn Heights Railroad Company.

General offices at 168 Montague street, Brooklyn, N. Y.

Date of close of fiscal year, June 30.

Date of stockholders' annual meeting, Thursday following the second Wednesday in January.

For information concerning this report, address T. S. Williams, secretary and treasurer.

518 DEFENDANT'S EXHIBIT No. 12.

Brooklyn Heights.

(Date of charter, April 1, 1899.)

For history of organization, etc., see report of 1899.

Included in this report are the physical statistics and result of operation of the following roads, which are leased to this company:

Brooklyn City.

Brooklyn, Queens County and Suburban.

Nassau Electric and leased lines (Coney Island and Gravesend Railroad Company.)

Brooklyn Union Elevated.

Kings County Elevated (from October 1, 1899, to date of merger with Brooklyn Union Elevated railroad).

Sea View (July 1, 1900, to date of merger with Kings County Elevated railroad).

Sea Beach.

Prospect Park and Coney Island and leased lines (New York and Coney Island and Prospect Park and South Brooklyn).

On July 1, 1899, the Sea View railroad was leased for payment of interest on funded debt, taxes and organization expenses.

On October 1, 1899, the Kings County Elevated railroad was leased for payment of interest on funded debt, taxes and organization expenses.

On April 1, 1900, the Nassau Electric railroad was leased for 999 years, lessee to pay as rental in addition to interest on bonded indebtedness, taxes and organization expenses, all net earnings, which shall not be less, however, than 4 per cent. per annum on $6,500,000 par value of the lessor's cumulative preferred stock outstanding.

On May 9, 1900, the Sea View Railroad Company was
519 merged with the Kings County Elevated Railroad Company, and on May 24, 1900, the Kings County Elevated Railroad Company was merged with the Brooklyn Union Elevated Railroad Company.

On July 1, 1900, the lease of the Brooklyn, Queens County and Suburban Railroad Company was extended for one year.

On April 1, 1900, the lease of the Brooklyn Union Elevated Railroad Company was extended for one year.

Capital Stock and Funded Debt.

Capital stock.

	Common.	
	Number of shares.	Total par value.
Authorized by law or charter, issued on account of construction and now outstanding	2,000	$200,000

Number of stockholders 14

Funded debt.

Designation of lien.	Date.	Term, years.	Interest.		Amount authorized.	Amount outstanding.	Cash realized on amount outstanding.
			Rate.	When payable.			
First mortgage.	April, 1891.	50	p. c. 5	April & Oct.	$250,000	$250,000	$250,000

Per mile of road owned	.59 miles.
Capital stock outstanding	$338,983 05
Cash realized on same	.....
Funded debt outstanding	423,728 81
Cash realized on same	423,778 18

Road.	Changes during year ending June 30, 1900.	Total cost of road and equipment up to June 30, 1900.
Real estate not used in operation of road	*5,000 00	
Purchase of constructed road	2,949 65	
Total cost of road	*$2,050 35	$443,823 08
Equipment.		
Horses	*$850 00	
Total cost of equipment	*$850 00	$18,674 42
Grand total cost of road and equipment	*$2,900 35	$462,497 50

Cost of road and equipment per mile of road owned.. $783,894 07

Details of Changes During the Year.

Sale of property, 77 Furman street	*$5,000 00
Settlement of judgment	2,949 65
Sale of horses	*850 00
	*2,900 35

Additions and Betterments on Leased Lines.

Track, roadway and overhead construction	$683,001 09
Right of way	3,769 44
Buildings and fixtures	238,798 37
Power station equipment and storage batteries	96,493 19
Car equipment	1,534,510 39
Tools and machinery	8,759 64
Miscellaneous equipment	4,375 00
	$2,569,709 12
Less credit—sale of old material	181,063 49
Total	$2,388,643 63
Balance due from lessor companies June 30, 1899	4,928,284 24
Total	$7,316,927 87
Amount paid by lessor companies during the year	1,135,726 72
Amount due from lessor companies June 30, 1900	$6,181,201 15

*Credit.

521 *Income Account for Year Ending June 30, 1900.*

Gross earnings from operation			$11,268,021 85
Less operating expenses (excluding all taxes)			7,048,493 38
Net earnings from operation			$4,219,528 47
Income from other sources, as follows, viz:			
Advertising		$108,782 40	
Rental of track		96,490 51	
Sale of power		40,923 94	
Rental of buildings or property		70,763 48	
Interest		3,527 94	
			320,488 27
Gross income from all sources			$4,540,016 74
Deductions from income, as follows, viz:			
Interest on funded debt, due and accrued	$12,500 00		
Interest on floating debt, due and accrued	4,004 74		
		$16,504 74	
Rentals		3,551,066 41	
Taxes on property used in operation of road	$529,546 39		
Taxes on earnings and capital stock	144,952 02		
Taxes other than above	22,222 39		
		696,720 80	
			4,264,291 98
Net income from all sources			$275,724 76
Payments from net income, as follows, viz:			
Amount turned over to Brooklyn Rapid Transit Company, in pursuance of terms of Brooklyn rapid transit mortgage			$275,724 76

Detailed Statement of Rentals.

Name of lessor road.	Total amount of rental paid by lessee.
Brooklyn City	$1,555,666 41
Nassau Electric	806,775 81
Brooklyn, Queens County and Suburban	328,699 99
Sea Beach	26,150 00

Brooklyn Union Elevated		628,038 13
	Prospect Park and Coney Island	40,000 00
522	Sea View	2,625 00
	Kings County Elevated	163,111 10
	Total amount of rentals deducted from income	$3,551,066 44

Analysis of Gross Earnings and Operating Expenses.

Earnings.

From passengers:		
Cash fares, sale of tickets and chartered cars		$11,206,716 01
From other sources:		
Freight	$12,454 96	
Mail	21,691 38	
Express	27,159 50	
		61,305 84
Total gross earnings		$11,268,021 85

Operating expenses.

General expenses:		
Salaries of general officers and clerks	$142,019 49	
Miscellaneous expenses, general office	37,044 12	
Insurance	25,512 56	
Law expenses	115,502 53	
Injuries and damages	797,789 91	
Contingent expenses	89,586 43	
		$1,207,455 04
Conducting transportation:		
Car service	$3,367,792 56	
Car house expenses	165,342 89	
Operation of power house	295,497 52	
Fuel	658,082 98	
Rents for tracks, yards and terminals	22,165 87	
Hired power	11,084 15	
		$4,519,965 97

Maintenance of way and structures:		
Maintenance, repairs and renewals of track and roadway construction...	$215,971 98	
Maintenance and repairs of overhead and underground construction.....	106,167 75	
Maintenance, repairs and renewals of buildings.....	93,589 56	
Maintenance and rent of buildings...	4,819 10	
Removal of snow and ice.....	18,340 63	
		438,889 02
523 Maintenance of equipment:		
Repairs of cars.....	$319,648 68	
Repairs of electrical and cable equipment of cars.....	306,891 01	
Repairs of steam plant and locomotives.....	108,198 34	
Repairs of electrical and cable plant..	120,062 21	
Repairs of tools and machinery.....	15,544 22	
Repairs, miscellaneous equipment.....	16,382 92	
Miscellaneous expenses.....	103,455 97	
		882,183 35
Total operating expenses.....		$7,048,493 38

Operating cost, 62.55 per cent. of earnings (excluding taxes).

Operating cost, 68.54 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

Operating cost, 13.18 cents per car mile (excluding taxes).

Cash Statement.

Receipts.

Cash on hand June 30, 1899.....	$437,553 88
Cash fares, sale of tickets and chartered cars.....	11,062,420 72
Freight.....	4,511 52
Mail.....	15,946 69
Express.....	24,515 22
Advertising.....	116,339 06
Accounts receivable.....	1,036,440 76
Bills payable (temporary loans).....	400,000 00
Bills receivable.....	232,066 66
Brooklyn Rapid Transit Company, account construction.....	779,088 13
Brooklyn Union Elevated railroad.....	360,000 00
Kings County Elevated.....	37,628 29
Sea View railroad.....	231,061 16

Brooklyn City railroad	24,000 00
Kings County Elevated Railroad Company	79,037 37
Miscellaneous sources	119,937 86
Sale of old material	341,371 30
	$15,301,921 62

Disbursements.

Operating expenses	$7,079,424 63
Taxes on property used in operation	252,310 64
Taxes on earnings and capital stock	105,718 22
524 Taxes other than above	22,174 05
Interest on funded debt	12,500 00
Other interest	3,697 15
Rentals	3,435,137 57
Real estate mortgages	4,500 00
Construction and equipment	2,474,417 02
Loans	400,000 00
Bills receivable	229,000 00
Open accounts (including supplies)	720,810 52
Sea View Railroad Company	97,297 55
Brooklyn Rapid Transit Company	446,554 77
Cash on hand June 30, 1900	18,379 50
	$15,301,921 62

General Balance Sheet, June 30, 1900.

Assets.

Cost of road	$443,823 08	
Cost of equipment	18,674 42	
		$462,497 50
Current assets as follows, viz.:		
Cash on hand	$18,379 50	
Open accounts	301,467 37	
Material and supplies on hand	516,606 88	
Additions and betterments on leased lines	6,181,201 15	
Betterments not yet distributed	85,773 39	
Prepaid insurance	34,260 51	
		7,137,688 80
		$7,600,186 30

Liabilities.

Capital stock		$200,000 00
Funded debt		250,000 00
Current liabilities as follows, viz:		
Interest on funded debt, due and accrued	$3,125 00	
Other interest, due and accrued	124 47	
Rentals due and accrued	836,319 51	
Taxes due and accrued	535,033 89	
Brooklyn rapid transit, equity in construction advances on leased lines	5,100,655 63	
525 Accounts payable	647,052 80	
Real estate mortgages	27,875 00	
		7,150,186 30
		$7,600,186 30

Traffic, Mileage, and Miscellaneous Statistics.

Number of passengers carried, including transfers	272,560,074
Number of transfers	42,051,904
Number of transfer points	137
Passenger car mileage	53,053,330
Freight and express car mileage	289,752
Mail car mileage	155,893
Total car mileage	53,498,975
Maximum speed, per hour, miles	6, 8 and 10
Rate of fare per passenger	3, 5 and 10c.
Cars are run every	6 sec.
Average number of employees (including officials) during year	8,076
Aggregate amount of salaries and wages paid them	$4,961,878 59
Telephone owned and operated by company, miles	28.70
Stations, passenger	153
Power houses	7
Car houses	19
Horses owned	91
Road constructed and opened for business during the year, miles	1.939
Total assessed value of real estate and personal property of company and lessor companies	$30,286,959 00
Length of steel rail laid during year in repairs, miles	.631
Steam railroad crossings at grade unprotected	2
Steam railroad crossings at grade protected by gates, flagmen or crossing alarm	10

Steam railroad crossings at grade protected by signal or interlocking device	20
Steam railroad crossings over grade	9
Steam railroad crossings under grade	5

Passenger cars are heated and lighted by electricity.

526 *Characteristics of Road and Equipment.*

Track.	Miles owned.	Miles leased.	Miles operated under trackage rights.	Total miles operated.
Single track, main line, electric cable and steam.	.59	246.739	1.530	248.859
Single track, main line, operated by horses		.161		.161
Total single track	.59	246.900	1.530	249.020
Second track, main line, electric, cable and steam	.59	238.262	.840	239.692
Second track, main line, operated by horses		.161		.161
Total second track	.59	238.423	.840	239.853
Sidings and turnouts, electric, cable and steam.	.086	33.931		34.011
Grand total, tracks, sidings and turnouts.	1.266	518.254	2.370	522.890
Laid with steel rail	1.266	519.254	2.370	522.890

Weight of rails per yard—steel, maximum, 98½ lbs.; minimum, 90 lbs. Gauge of track, 4 feet 8½ inches.

Equipment.	Number owned, cable.	Number leased.		Maximum.		Average cost.
		Motors.	Other than motors.	Weight, pounds.	Length, feet.	
Locomotives		142		*45,000	*29.	*$4,600 00
Box cars	8	1,590	492	*67,000 †21,250	*46.2 †34.	*$8,400 00 †2,530 00
Open cars	7	1,358	61	†23,000	†37.	†2,500 00
Mail cars		8		16,000	24.2	1,350 00
Express cars		10		25,000	25.2	400 00
Freight cars		12	1			
Service cars		69	34	34,500	38.4	400 00
Snow plows		49		20,000	26.11	875 00
Sweepers		39		20,000	27.1	900 00
Total	15	3,277	588			

* Elevated.
† Surface.

527 *Track Mileage of Lines Owned and Leased.*

Line.	Owned by—	Miles owned.	Miles leased.
Montague street	Brooklyn Heights Railroad Co.	1.18	
Sidings	Brooklyn Heights Railroad Co.	.086	
Nostrand avenue	Brooklyn City Railroad Co		13.459
Crosstown	Brooklyn City Railroad Co		11.909
Green and Gates avenue	Brooklyn City Railroad Co		7.444
Hamilton avenue	Brooklyn City Railroad Co		2.899
Court street	Brooklyn City Railroad Co		2.982
Fulton street	Brooklyn City Railroad Co		11.508
Flushing and Graham avenues	Brooklyn City Railroad Co		8.834
Union avenue	Brooklyn City Railroad Co		4.408
Lorimer street	Brooklyn City Railroad Co		3.555
Myrtle avenue	Brooklyn City Railroad Co		8.679
Flatbush avenue	Brooklyn City Railroad Co		15.783
Third avenue	Brooklyn City Railroad Co		12.606
Putnam avenue and Halsey street	Brooklyn City Railroad Co		7.179
Grand street	Brooklyn City Railroad Co		8.033
Greenpoint	Brooklyn City Railroad Co		6.875
Tompkins avenue	Brooklyn City Railroad Co		6.182
Bushwick avenue	Brooklyn City Railroad Co		4.509
Flushing extension	Brooklyn City Railroad Co		12.056
Second avenue	Brooklyn City Railroad Co		4.455
Bensonhurst	Brooklyn City Railroad Co		9.321
Meeker avenue	Brooklyn City Railroad Co		2.928
Bowery bay	Brooklyn City Railroad Co		12.470
Richmond Hill	Brooklyn City Railroad Co		8.144
Cypress hills	Brooklyn City Railroad Co		2.915
Lutheran cemetery	Brooklyn City Railroad Co		2.628
Ridgewood depot (terminal tracks, etc.)	Brooklyn City Railroad Co		1.370
Calvary cemetery	Brooklyn City Railroad Co		2.965
Furman street	Brooklyn City Railroad Co		2.167
Oakland street	Brooklyn City Railroad Co		.279
Nassau avenue	Brooklyn City Railroad Co		1.701
Messerole avenue	Brooklyn City Railroad Co		.557
Crosstown annex	Brooklyn City Railroad Co		.322
Avenue C	Brooklyn City Railroad Co		1.250
Sidings	Brooklyn City Railroad Co		3.507
Sea beach	Sea Beach Railroad Co		12.280
Sidings			1.570
Broadway	Brooklyn, Queens Co. & Sub. R. R. Co.		8.60
East New York terminal	Brooklyn, Queens Co. & Sub. R. R. Co.		.70
Jamaica	Brooklyn, Queens Co. & Sub. R. R. Co.		12.00
Cypress hills	Brooklyn, Queens Co. & Sub. R. R. Co.		3.89
Reid avenue	Brooklyn, Queens Co. & Sub. R. R. Co.		5.35
Sumner avenue	Brooklyn, Queens Co. & Sub. R. R. Co.		3.60
Ralph avenue	Brooklyn, Queens Co. & Sub. R. R. Co.		2.86
Metropolitan avenue	Brooklyn, Queens Co. & Sub. R. R. Co.		10.05
Sidings	Brooklyn, Queens Co. & Sub. R. R. Co.		.17

Track Mileage of Lines Owned and Leased—Continued.

Line.	Owned by—	Miles owned.	Miles leased.
Canarsie	Nassau Electric Railroad Co		16.52
Marcy avenue	Nassau Electric Railroad Co		18.48
Douglass street	Nassau Electric Railroad Co		9.40
Church avenue	Nassau Electric Railroad Co		12.28
Fort Hamilton	Nassau Electric Railroad Co		6.42
Eighty-sixth street	Nassau Electric Railroad Co		3.68
Fifth avenue	Nassau Electric Railroad Co		8.04
Butler street	Nassau Electric Railroad Co		3.48
Seventh avenue	Nassau Electric Railroad Co		3.46
Fifteenth street	Nassau Electric Railroad Co		2.98
Hicks street	Nassau Electric Railroad Co		1.68
Bergen street	Nassau Electric Railroad Co		9.13
Adams street	Nassau Electric Railroad Co		3.42
Vanderbilt avenue	Nassau Electric Railroad Co		6.14
West End division	Nassau Electric Railroad Co		10.92
Park avenue	Nassau Electric Railroad Co		7.18
Sidings	Nassau Electric Railroad Co		6.60
Surf avenue	Coney Island & Gravesend		6.32
528 Prospect Park and Coney Island div.	Prospect Park & Coney Isl'd R. R. Co.		25.07
Elevated division	Brooklyn Union Elevated Railroad Co.		87.734
Bridge division	New York and Brooklyn bridge		3.60
Operated under trackage rights:			
Jay street	Coney Island and Brooklyn R. R. Co.	1.15	
Washington street	Coney Island and Brooklyn R. R. Co.	.45	
Ninth avenue	Coney Island and Brooklyn R. R. Co.	.53	
Front, Fulton and Water streets	Coney Island and Brooklyn R. R. Co.	.24	
			2.37
Total leased			521.624
Miles of track owned			1.266
Grand total track owned, leased and operated			522.890

	Miles owned.	Miles leased (electric).	Miles trackage rights.	Totals.
First track:				
Brooklyn Heights railroad	.59			.59
Brooklyn City railroad		103.62	*1.025	104.645
Brooklyn, Queens County and Suburban railroad		24.15		24.15
Nassau Electric railroad		61.77	*.505	62.275
Coney Island and Gravesend railroad		3.16		3.16
Sea Beach railroad		6.14		6.14
Brooklyn Union Elevated railroad		37.00		37.00
New York and Brooklyn bridge		1.30		1.30
Prospect Park and Coney Island railroad		9.76		9.76
Total, first track	.59	246.90	*1.530	249.02
Second track:				
Brooklyn Heights railroad	.59			.59
Brooklyn City railroad		98.523	*.575	99.098
Brooklyn, Queens County and Suburban railroad		22.90		22.90
Nassau Electric railroad		61.44	*.265	61.705
Coney Island and Gravesend railroad		3.16		3.16
Sea Beach railroad		6.14		6.14
Brooklyn Union Elevated railroad		37.00		37.00
New York and Brooklyn bridge		1.30		1.30
Prospect Park and Coney Island railroad		7.96		7.96
Total, second track	.59	238.423	*.840	239.853
Third track and sidings:				
Brooklyn Heights railroad	.086			.086
Brooklyn City railroad		3.507		3.507
Brooklyn, Queens County and Suburban railroad		.17		.17
Nassau Electric railroad		6.49		6.49
Coney Island and Gravesend railroad		.11		.11
Sea Beach railroad		1.57		1.57
Brooklyn Union Elevated railroad		13.734		13.744
New York and Brooklyn bridge		1.00		1.00
Prospect Park and Coney Island railroad		7.35		7.35
Total, third track and sidings	.086	33.931		34.017
Grand totals	1.266	519.254	*2.37	522.89

* Belongs to Coney Island and Brooklyn Railroad Company.

529 *Salaries, Wages, etc., of Officers and Other Employees.*

Officers and clerks.

	Annual salary.
General officers and clerks	$142,019 49

Other employees.

	Average number of hours on duty per day.	Wages per day.
Conductors	10	$2 00 to $2 30
Drivers	10	1 50 to 2 25
Motormen	10	2 00 to 2 30
Starters	10	2 25
Watchmen	10	1 50 to 2 00
Switchmen	10	1 25 to 2 25
Roadmen	10	2 50
Hostlers	10	1 50 to 1 75
Linemen	10	1 75 to 3 00
Engineers	10	2 75 to 6 50
Firemen	10	1 50 to 1 75
Electricians	10	1 75 to 3 50
Machinists and mechanics	10	2 00 to 3 00

Recapitulation of Accidents.

	Killed.	Injured.
Passengers	7	33
Employees	16	7
Others	31	53
Total	54	93

Total paid for injuries and damages caused by accidents:

Paid by the company $799,789 91

Officers of the Company.

Name.	Title.	Official address.
C. L. Rossiter	President	168 Montague street, Brooklyn, N. Y.
H. C. Duval	Vice-president	168 Montague street, Brooklyn, N. Y.
T. S. Williams	Vice-president	168 Montague street, Brooklyn, N. Y.
C. D. Meneely	Treas. and sec.	168 Montague street, Brooklyn, N. Y.
J. C. Brackenridge	General manager	168 Montague street, Brooklyn, N. Y.

530 *Directors of the Company.*

Name.	Residence.
C. L. Rossiter	Brooklyn, N. Y.
August Belmont	New York city.
H. H. Porter	New York city.
E. H. Harriman	New York city.
A. N. Brady	Albany, N. Y.
T. S. Williams	Brooklyn, N. Y.
Walter G. Oakman	Brooklyn, N. Y.
A. R. Flower	New York city.
Henry Seibert	Brooklyn, N. Y.
J. G. Jenkins	Brooklyn, N. Y.
D. H. Valentine	Brooklyn, N. Y.
H. C. Duval	Brooklyn, N. Y.
R. Somers Hayes	Brooklyn, N. Y.

Title of company, Brooklyn Heights Railroad Company.

General offices at 168 Montague street, Brooklyn, N. Y.

Date of close of fiscal year, June 30.

Date of stockholders' annual meeting, Thursday following second Wednesday in January.

For information concerning this report, address C. D. Meneely, secretary and treasurer.

DEFENDANT'S EXHIBIT No. 13.

Brooklyn City Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending December 31, 1900.

(Leased to Brooklyn Heights Railroad Company.)

1900.

Gross earnings from operation	.....
Operating expenses (excluding all taxes)	....
Net earnings from operation	.....
Income from other sources than operation	.....
Gross income from all sources	.....
Deductions from income, as follows:	
Interest on funded debt	.....

531 Taxes—

On property used in operation of road	.....
On earnings and capital stock	.....
Other than above	.....
Rentals	.....
Net income from all sources	.....
Net income, as previously reported, for preceding quarters in this fiscal year	.....

Operating cost — per cent. of earnings (excluding all taxes).

Operating cost — per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

Brooklyn City Railroad Company.

General Balance Sheet, December 31, 1900, *as Reported to State Board of Railroad Commissioners.*

Assets.

Cost of road and equipment	$18,925,000 00
Stocks and bonds of other companies	.....
Other permanent investments	350,893 75
Supplies on hand	.....
Accrued interest	.....
Due by agents of this company on account of traffic	.....
Due by others (not agents of this company) on account of traffic	.....
Due by companies and individuals (on open accounts other than traffic)	4,645 65
Cash on hand	41,921 33
Profit and loss (deficiency)	.....
	$19,322,460 73

532 Liabilities.

Capital stock, common	$12,000,000 00
Capital stock, preferred	.....
Funded debt	6,925,000 00
Loans and bills payable	.....
Interest on funded debt due and accrued	.....
Dividends unpaid	.....
Due for wages and supplies	.....

Due companies and individuals (on open accounts)..	36,720 06
Profit and loss (surplus).....	360,740 67
	$19,322,460 73

Adjourned to Wednesday, November 20, 1901, at 11 a m., at the capitol in the city of Albany, N. Y.

DEFENDANT'S EXHIBIT No. 14.

Brooklyn City, lessor.

Lessee, Brooklyn Heights.

(Date of charter, December 19, 1853.)

For history of organization, etc., see report of 1895.

Capital Stock and Funded Debt.

Capital stock.

	Common.		Cash realized on amount outstanding.
	Number of shares.	Total par value.	
Authorized by law or charter, issued for actual cash and now outstanding	1,200,000	$12,000,000	$12,000,000

Number of stockholders 1,366

533 Funded debt.

Designation of lien.	Date.	Term, years.	Interest. Rate.	Interest. When payable.	Amount authorized.	Amount outstanding.	Cash realized on amount outstanding.
			p. c.				
B'kl'n City 1st mtg. on con. properties	July 1, '91	{25 & 50	5	Jan. & July	$6,000,000	$6,000,000	$6,221,341
Brookl'n Crosstown R. R. 1st mtg	June 27, '88	20	5	Jan. & July	200,000	200,000	200,000
Calv. Cemetery Greenp't and Brookl'n R. R.....	June 1, '87	20	6	June & Dec.	200,000	200,000	200,000
New Williamsburgh and Flatbush R. R.....	Feb. 1, '97	{19 & 44	4½	Feb. & Aug.	200,000	200,000	200,000
Greenpoint and Lorimer St. R. R.....	May 1, '85	25	6	May & Nov	125,000	125,000	125,000
Grand St. and Newt'n R. R	July 1, '86	20	5	April & Oct.	200,000	200,000	200,000
Total	.....	.....	.....	.....	$6,925,000	$6,925,000	$7,146,341

Per mile of track owned	200 miles.
Capital stock outstanding	$60,000 00
Cash realized on same	60,000 00
Funded debt outstanding	34,625 00
Cash realized on same	35,731 75

Cost of Road and Equipment.

Road.	Total cost of road and equipment up to June 30, 1899.
Track and roadway construction	$8,210,031 85
Buildings and fixtures used in operation of road	5,833,305 43
Interest and discount charged to construction	152,345 78
*Total cost of road	$14,195,683 06
534 Equipment.	
Total cost of equipment	$4,729,316 94
Grand total cost of road and equipment	$18,925,000 00
Cost of track per mile owned	$70,978 42
Cost of equipment per mile of track owned	23,646 58
Cost of road and equipment per mile of track owned.	94,625 00

Income Account for Year Ending June 30, 1899.

Total from sources other than rentals:	
Interest	$14,326 72
Surplus	52
Surplus for year ending June 30, 1899	$14,327 24
General income account:	
Surplus up to June 30, 1898	447,725 27
	$462,052 51
Dividends of 1 per cent. paid from surplus, accumulated principally before leasing properties	120,000 00
Total surplus June 30, 1899	$342,052 51

*Under terms of lease of the Brooklyn City Railroad Company of its properties to the Brooklyn Heights Railroad Company the proceeds of sales of any real estate no longer necessary for railroad purposes are to be expended in extensions and betterments.

During the year $25,548.11 of such proceeds have been paid towards cost of extending Avenue C, Nostrand avenue, Greenpoint avenue, Flushing avenue and Rockwell place.

Hence add $25,548.11 to construction of roadbed and track and deduct a like amount from real estate.

Detailed Statement of Rentals.

Name of lessee company.	Total amount of rental paid by lessee.
Brooklyn Heights Railroad Company.....	$1,567,672 40

General Balance Sheet, June 30, 1899.

Assets.

Cost of road.....	$14,195,683 06	
Cost of equipment	4,729,316 94	
		$18,925,000 00
Other permanent investments, as follows, viz.:		
Southern repair shops.....		30,000 00
Current assets, as follows, viz.:		
Cash on hand	$23,157 32	
Bills receivable.....	100,000 00	
Open accounts.....	2,477 30	
535 Bond investment.....	209,893 75	
Bond and mortgage.....	11,000 00	
		346,528 37
		$19,301,528 37

Liabilities.

Capital stock.....	$12,000,000 00
Funded debt.....	6,925,000 00
Current liabilities, as follows, viz:	
Sundries.....	34,475 86
Profit and loss (surplus).....	342,052 41
	$19,301,528 37

**Characteristics of Road.*

*The seeming discrepancy of mileage, as shown in reports of lessor and lessee, is accounted for by the fact that the latter has constructed extensions to the system of the former, which, at the expiration or sooner termination of the lease between the two, must, upon approval and payment therefor, be given over to the lessor, and hence might be classed as owned by it and leased to the lessee. Still, since the lessor has not paid for the construction of the same, if the extension should be so designated, report would be misleading, and thus make calculations of relative cost of construction per mile erroneous, it has been deemed advisable to report in the case of the lessor only such mileage as has been built and paid for by it; particularly so, as the extensions are to be taken on appraisal, and in that method only, and the lessor company does not care to commit itself to the charge of the lessee.

See reports of Brooklyn Heights Railroad Company, lessee, adding .98 mile of single track to account for $25,548.11 reported in extensions, as noted in construction account. Brooklyn City Railroad Company mileage, about 100 miles double track.

Salaries, Wages, etc., of Officers.

Officers and clerks.

	Annual salary.
General officers	$6,600 00
Clerks	1,820 00

Officers of the Company.

Name.	Title.	Official address.
Edward Merritt	President	168 Montague street, Brooklyn, N. Y.
Edward D. White	Sup't and vice-pres.	168 Montague street, Brooklyn, N. Y.
Thomas P. Swin	Sec. and treas.	168 Montague street, Brooklyn, N. Y.

536 *Directors of the Company.*

Name.	Residence.
E. H. K. Belcher	Brooklyn, N. Y.
Eugene Britton	Brooklyn, N. Y.
R. L. Edwards	Brooklyn, N. Y.
Daniel G. Legget	Brooklyn, N. Y.
Frank Lyman	Brooklyn, N. Y.
Edward Merritt	Brooklyn, N. Y.
George H. Prentiss	Brooklyn, N. Y.
Alonzo Slote	Brooklyn, N. Y.
† F. A. Van Iderstine	Brooklyn, N. Y.
Edward D. White	Brooklyn, N. Y.
S. L. Husted, Jr.	New York city.
James Timpson	New York city.
Geo. W. Bergen	Brooklyn, N. Y.

Title of company, the Brooklyn City Railroad Company.
General offices at 168 and 170 Montague street, Brooklyn, N. Y.
Date of close of fiscal year, June 30.
Date of stockholders' annual meeting, second Monday in January.
For information concerning this report, address Thomas P. Swin, secretary and treasurer.

† Deceased.

DEFENDANT'S EXHIBIT No. 15.

Brooklyn City, lessor.

Lessee, Brooklyn Heights.

(Date of charter, December 19, 1853.)

For history of organization, etc., see report of 1895.

Capital Stock and Funded Debt.

Capital stock.

	Common.		Cash realized on amount outstanding.
	Number of shares.	Total par value.	
Authorized by law or charter, issued for actual cash and now outstanding	1,200,000	$12,000,000	$12,000,000
Number of stockholders			1,338

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Funded debt.

Designation of lien.	Date.	Term, years.	Interest.		Amount authorized.	Amount outstanding.	Cash realized on amount outstanding.
			Rate.	When payable.			
Brooklyn City first mortgage on con. properties.....	1891 July 1	25&50	p. c. 5	Jan. & July	$6,000,000	$6,000,000	$6,221,341
Brooklyn Crosstown R. R. first mtge.....	1888 June 27	20	5	Jan. & July	200,000	200,000	200,000
Calvary Cemetery, Greenpoint and Brooklyn R. R.....	1887 June 1	20	6	June & Dec.	200,000	200,000	200,000
New Williamsburgh & Flatbush R. R.....	1897 Feb. 1	19&41	4½	Feb. & Aug.	200,000	200,000	200,000
Greenpoint & Lorimer St. R. R.	1887 May 1	25	6	May & Nov.	125,000	125,000	125,000
Grand Street and Newtown R. R.....	1899 July 1	20	5	Apr. & Oct.	200,000	200,000	200,000
Total.....					$6,925,000	$6,925,000	$7,146,341

Per mile of road owned.....	200 miles.
Capital stock outstanding.....	$60,000 00
Cash realized on same.....	60,000 00
Funded debt outstanding.....	34,625 00
Cash realized on same.....	35,731 75

Cost of Road and Equipment.

Road.	Total cost of road and equipment up to June 30, 1900.
Track and roadway construction	$8,210,031 85
Buildings and fixtures used in operation of road	5,833,305 43
Interest and discount charged to construction	152,345 78
* Total cost of road	$14,195,683 06
538 Equipment.	
Total cost of equipment	4,729,316 94
Grand total cost of road and equipment	$18,925,000 00
Cost of track per mile owned	$70,978 42
Cost of equipment per mile of track owned	23,646 58
Cost of road and equipment per mile of track owned	94,625 00

Income Account for Year Ending June 30, 1900.

Total from sources other than rentals:

Interest	$12,344 25
Surplus	42
Surplus for year ending June 30, 1900	$12,344 67
General income account:	
Surplus up to June 30, 1899	342,052 51
Total surplus June 30, 1900	$354,397 18

* Under terms of lease of the Brooklyn City Railroad Company of its properties to the Brooklyn Heights Railroad Company, any property of the lessor no longer required by the lessee to the efficient operation of the railroads leased, may be sold and the proceeds derived therefrom shall be applied in constructing extensions or branches or in the purchase of other real estate, buildings or fixtures.

During the year ending June 30, 1900, there was secured from the sources noted $28,336.28, of which was expended on eastern power station and in purchase of other real estate $24,630, leaving in hand a balance of $3,697.28, which will be treated in the same manner.

Detailed Statement of Rentals.

Name of lessee company.	Total amount of rental paid by lessee.
Brooklyn Heights Railroad Company	$1,572,905 19

General Balance Sheet, June 30, 1900.

Assets.

Cost of road	$14,195,683 06	
Cost of equipment	4,729,316 94	
		$18,925,000 00
Other permanent investments, as follows, viz:		
Southern repair shops		30,000 00
Current assets as follows, viz:		
Cash on hand	$38,405 16	
Accounts receivable	100,000 00	
Open accounts	1,233 05	
Bond investment	209,893 75	
Bond and mortgage	11,000 00	
		360,531 96
		$19,315,531 96

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Liabilities.

Capital stock	$12,000,000 00
Funded debt	6,925,000 00
Current liabilities as follows, viz:	
Sundries	36,134 78
Profit and loss (surplus)	354,397 18
	$19,315,531 96

**Characteristics of Road.*

* The seeming discrepancy of mileage, as shown in reports of lessor and lessee, is accounted for by the fact that the latter has constructed extensions to the system of the former, which, at the expiration or sooner termination of the lease between the two, must, upon approval and payment therefor, be given over to the lessor, and hence might be classed as owned by it and leased to the lessee. Still, since the lessor has not paid for the construction of the same, if the extension should be so designated, report would be misleading and thus make calculations of relative cost of construction per mile erroneous, it has been deemed advisable to report in the case of the lessor only such mileage as has been built and paid for by it; particularly so, as the extensions are to be taken on appraisal, and in that method only, and the lessor company does not care to commit itself to the charge of the lessee.

See report of Brooklyn Heights Railroad Company, lessee Brooklyn City Railroad Company; mileage, about 100 miles double track.

Salaries, Wages, etc., of Officers.

Officers and clerks.

	Annual salary
General officers	$6,600 00
Clerks	1,820 00

Officers of the Company.

Name.	Title.	Official address.
Edward Merritt	President	168 Montague street, Brooklyn, N. Y.
Thomas P. Swin	Sec. and treas	168 Montague street, Brooklyn, N. Y.

Directors of the Company.

	Name.	Residence.
	E. H. K. Belcher	Brooklyn, N. Y.
	Eugene Britton	Brooklyn, N. Y.
	R. L. Edwards	Brooklyn, N. Y.
540	Daniel G. Legget	Brooklyn, N. Y.
	Frank Lyman	Brooklyn, N. Y.
	Edward Merritt	Brooklyn, N. Y.
	George H. Prentiss	Brooklyn, N. Y.
	Alonzo Slote	Brooklyn, N. Y.
	Chas. M. Pratt	Glen Cove, N. Y.
	Edward D. White	Brooklyn, N. Y.
	S. L. Husted	New York city.
	James Timpson	New York city.
	Geo. W. Bergen	Freeport, N. Y.

Title of company, the Brooklyn City Railroad Company.

General offices at 168 Montague street, Brooklyn, N. Y.

Date of close of fiscal year, June 30.

Date of stockholders' annual meeting, second Monday in January.

For information concerning this report, address Thomas P. Swin, secretary and treasurer.

Brooklyn City and Newtown, lessor.

Lessee, Coney Island and Brooklyn.

(Date of charter, May 22, 1860.)

For history of organization, etc., see report of 1898.

Capital Stock and Funded Debt.

Capital stock.

	Common.		Cash realized.
	Number of shares.	Total par value.	
Authorized by law or charter	20,000	$200,000	
Issued for actual cash	7,000	$700,000	$7 00000
Issued on account of construction	3,000	300,000	
Issued for stock C. I. & B. R. R. Co. at par, share for share	9,234	923,400	
Total	19,234	$1,923,400	$700,000
Less held by C. I. & B. R. R. Co.	19,214	1,921,400	
Total	20	$2,000	

Number of stockholders ... 2

541 DEFENDANT'S EXHIBIT No. 16.

Nassau Electric Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1899.

1899.

Gross earnings from operation		$401,720 29
Operating expenses (excluding all taxes)		390,101 25
Net earnings from operation		11,619 04
Income from other sources than operation		20,322 71
Gross income from all sources		31,941 75
Deductions from income, as follows:		
Interest on funded debt	$146,382 60	
Floating	1,662 58	
Real estate mortgages	2,773 65	
Taxes—		
On property used in operation of road	20,345 49	
On earnings and capital stock	6,022 44	
Other than above	1,805 01	

Rentals	2,175 00	
		181,166 77
Net income from all sources, deficit.....		149,225 02
Net income, as previously reported, for preceding quarters in this fiscal year, deficit.....		210,626 16

Operating cost, 97.14 per cent. of earnings (excluding all taxes).

Operating cost, 103.67 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

542 DEFENDANT'S EXHIBIT No. 17.

Nassau Electric.

Report of Operations for Nine Months Ending March 31, 1899, *and as Lessor for Three Months Ending June* 30, 1899.

(Date of charter, March 13, 1893.)

Included in this report are the physical statistics and result of operations of the following roads, which are leased or owned by this company:

Kings County Electric Railway Co. Merged Aug. 1, 1898.

Coney Island, Ft. Hamilton & Brooklyn R. R. Co. Merged Aug. 1, 1898.

Union R. R. Co. of the City of Brooklyn. Merged Aug. 1, 1898.

Brooklyn, Bath & West End Railroad Co. Merged by the Atlantic Avenue R. R. Co. Sept. 21, 1898.

Atlantic Avenue Railroad Company. Merged Jan. 26, 1899.

United Railroad Co. Merged Jan. 26, 1899.

Coney Island & Gravesend Railway Co. Leased.

This company was organized March 13, 1893; the Kings County Electric Railway Company was organized November 29, 1892; the Coney Island, Fort Hamilton & Brooklyn Railroad Company was organized January 27, 1892, and the Union Railroad Company of the City of Brooklyn was organized June 19, 1884.

In April, 1894, the Nassau Electric Railroad Company acquired a practically exclusive right to use the tracks of the three above named companies in perpetuity, and all four of the said railroad companies entered into a construction contract under which their roads were to be built and equipped for $6,000,000 of the first
543 mortgage bonds, and $6,000,000 of the capital stock of this company.

The construction was begun in May, 1894, but owing to legal difficulties the road was not opened until July 28, 1895, and then only in part.

By lease dated March 4, 1896, taking effect April 4, 1896, the Nassau Electric Railroad Company leased for a term of 969 years

the Atlantic Avenue railroad, including the Brooklyn, Bath & West End railroad, at an annual rental of $150,000, payable semi-annually on the first days of January and July, until January 1, 1898, and thereafter $180,000, in addition to all taxes and interest on debt not exceeding $5,500,000.

By a temporary arrangement, terminable on short notice, this company operated, until time of merger, the railroad of the United Railroad Company, known as the Park Avenue line. Under this arrangement this company paid, by way of rental, one-half of the net earnings of the line, if any.

On November 5, 1897, this company leased for a term of 999 years the constructed portions of the railroad of the Coney Island & Gravesend Railway Company, together with some additional rights, privileges and franchises on streets where railroads had not been built, the conditions of the lease being that the Nassau Company pay the entire cost of construction of such leased portions of the Gravesend road, and also at the expiration of five years, or sooner, the sum of $150,000, together with interest on said sum at the rate of five per cent. (5%).

By contracts dated August 23, 1897, and September 29, 1897, between the trustees of the New York & Brooklyn Bridge and this company, the Brooklyn Heights Railroad Company, the Brooklyn City & Newtown Railroad Company, and the Coney Island & Brooklyn Railroad Company, respectively, the above railroad companies secured the joint right to operate cars over said bridge.
544 The expense of all construction work was to be borne by the railroad companies in proportions to the number of cars to be operated by them, and a tax of five cents (5c.) per trip was to be paid to the city for each car operated over the bridge. Regular passenger service was commenced on February 16, 1898.

On August 1, 1898, the Nassau Electric Railroad Company merged the Kings County Electric Railway Company, the Coney Island, Fort Hamilton & Brooklyn Railroad Company, and the Union Railroad Company of the City of Brooklyn.

In January, 1899, the company underwent voluntary reorganization, having for its object the simplification of its organization, the payment of floating debt incurred principally for construction, and the reduction of fixed charges. The capital stock was increased from $6,000,000 to $15,000,000, of which $6,500,000 is preferred four per cent. (4%) cumulative stock and $8,500,000 is common stock. At the same time $15,000,000 consolidated mortgage four per cent. (4%) bonds were authorized, of which $11,000,000 were to retire prior lien bonds of the Nassau, Atlantic Avenue and Brooklyn, Bath & West End Railroad Companies, $2,500,000 were used pursuant to the plan of reorganization and $1,500,000 were reserved in the treasury for future additions and improvements. Of these consolidated four per cent. (4%) mortgage bonds $8,946,960 have thus far been issued. By virtue of this reorganization the company became the owner of all the capital stock of the Atlantic Avenue Railroad Company, includ-

ing the Brooklyn, Bath & West End Railroad Company and the United Railroad Company.

On January 26, 1899, the Nassau Electric Railroad Company merged the Atlantic Avenue Railroad Company, which had previously merged the Brooklyn, Bath & West End Railroad Company.

On January 26, 1899, the Nassau Electric Railroad Company merged the United Railroad Company.

545 By lease effective April 1, 1899, this company was leased for one year to the Brooklyn Heights Railroad Company, the latter paying as rental $150,000 per annum, in addition to all fixed charges, taxes and insurance.

The present report is that of an operating company for nine (9) months to March 31, 1899, and of a lessor company for three (3) months to June 30, 1899.

Capital Stock and Funded Debt.

Capital stock.

	Common.		Preferred.	
	Number of shares.	Total par value.	Number of shares.	Total par value.
Authorized by law or charter, issued on account of construction and acquirement of properties and now outstanding.....	85,000	$8,500,000	65,000	$6,500,000

Grand total of common and preferred stock now outstanding..... $15,000,000 00

Number of stockholders..... 32

Funded debt.

Designation of lien.	Date.	Term, years.	Interest. Rate.	Interest. When payable.	Amount authorized.	Amount outstanding.
			Per c.			
Nassau general mtge.....	June 30, 1898	50	4	Jan. & July 1	$15,000,000	$8,940,000
Nassau first mtge.....	Apr. 1, 1894	50	5	Apr. & Oct. 1	600,000	600,000
Atlantic Av. first con. bonds.....	Sept. 30, 1884	25	5	Apr. & Oct. 1	750,000	750,000
Atlantic Av. gen. mtge. bonds.....	Apr. 25, 1894	40	5	Apr. & Oct. 1	2,241,000	2,241,000
Atlantic Av. imp. mtge. bonds.....	Jan. 1, 1891	40	5	Jan. & July 1	220,000	220,000
B. B. W. E. first mtge. "A".....	Dec. 28, 1886	(1 to 4 (5 to 20	5	Jan. & July 1	250,000	250,000
B. B. W. E. first mtge. "B".....	Dec. 28, 1886	(1 to 4 (5 to 20	5	Apr. & Oct. 1	250,000	250,000
B. B. W. E. 2nd mtge. "C".....	July 1, 1894	50	5	June & Dec. 1	52,000	52,000
B. B. W. E. general mtge.....	Oct. 2, 1896	40	5	April & Oct.	121,000	121,000
Total.....	.....	.....	...	.....	$19,634,000	$13,380,000

Per mile of road owned..... 61.77 miles.
Capital stock outstanding ..... $243,000. (Approximate.)
Funded debt outstanding..... 219,000. (Approximate.)

546 *Cost of Road and Equipment.*

Road.	Additions or betterments during year ending June 30, 1899.	Total cost of road and equipment up to June 30, 1899.
Track and roadway construction	*$31,644 36	$107,291 20
Overhead construction	*38,504 03	1,954 94
Reorganization expenses	47,861 30	47,861 30
Law expenses	150 00	45,409 75
Buildings and fixtures used in operation of road	10,464 10	45,893 85
Interest and discount charged to construction		22,683 33
Road built by contract	2,651,000 00	10,500,000 00
Purchase of constructed road and equipment	16,388,357 73	16,388,357 73
Equipment.		
Power station equipment	120,220 76	182,692 41
Motor cars	111,205 41	222,165 29
Horses and rolling stock other than cars	1,726 02	1,726 02
Purchased by contract		1,000,000 00
Grand total cost of road and equipment	$19,260,836 93	$28,562,065 94

Cost of road and equipment per mile of road owned (approximate)..... $462,000 00

Details of Additions or Betterments During the Year.

New special work for loops and terminals	$11,658 61	
Less correction of charge to construction for six months ending June 30, 1898	43,302 97	
Net credit		*31,644 36
Credit feeder wires taken down	$24,302 81	
Correction of charges to construction six months ending June 30, 1898	14,201 22	
		*38,504 03
Reorganization expenses, including internal revenue tax, etc		47,861 30
Law expenses		150 00

*Credit.

Payment on account of property for Broadway terminal		$5,000 00	
Artesian well, Thirty-ninth Street power station		5,349 75	
Plans for new car house		114 35	
			10,464 10
First mortgage bonds turned over to contractors under terms of construction contract		$651,000 00	
Closed into construction upon merger of subordinate companies		2,000,000 00	
			2,651,000 00
547 Properties acquired under reorganization plan as set forth in introduction			16,388,357 73
New machinery for addition to power station, Third avenue and First street			120,220 76
Seventy-five new open cases		$60,015 00	
New motors and controllers		53,292 82	
Lumber for new closed cars		1,910 15	
		115,217 97	
Less cars sold	$2,300 00		
Less correction of charge to construction, six months ending June 30, 1898	1,712 56		
		4,012 56	
			111,205 41
Two new snow plows		$1,866 02	
Less cars, etc., sold		140 00	
			1,726 02
			$19,260,836 93

Additions and Betterments on Leased Lines.

Track and roadway construction		$40,817 67
Overhead construction		*108 35
Buildings and fixtures		*886 28
Car equipment		*500 00
Total		$39,323 04
Amount expended to June 30, 1898		1,782,673 73
Total		$1,821,996 77
Closed into construction account upon merger of leased companies		1,669,590 47
Balance		$152,406 30

Income Account for Year Ending March 31, 1899.

Gross earnings from operations nine months ending March 31, 1899		$1,558,697 58
Less operating expenses (excluding all taxes) nine months ending March 31, 1899		1,312,550 33
Net earnings from operations		$246,139 25
Income from other sources, as follows, viz.:		
Advertising, nine months ending March 31, 1899	$6,650 60	
Rental of track, nine months ending March 31, 1899	42,200 00	
Rental of buildings or property, nine months ending March 31, 1899	2,744 62	
Rental Brooklyn Heights Railroad Company for three months ending June 30, 1899	37,500 00	
		93,095 22
Gross income from all sources		$339,234 47
Deductions from income, as follows, viz.:		
Interest on funded debt, accrued to March 31, 1899	$283,882 60	
Interest on floating debt, accrued, to March 31, 1899	23,037 74	
	$306,920 34	
Rentals to March 31, 1899	248,404 19	
Taxes on property used in operation of road	$70,840 72	
Taxes on earnings and capital stock	29,517 00	
Taxes other than above	5,903 40	
	106,261 12	
Sundry expenses, three months ending June 30, 1899	93,407 56	
		754,993 21
Deficit for year ending June 30, 1899		$415,758 74

* Credit.

General income account:

Surplus up to June 30, 1898	$174,673 73	
Carried direct to profit and loss during year	169,696 88	
		4,976 85
Total deficit June 30, 1899		$410,781 89

Detailed Statement of Rentals.

Name of lessor road.	Total amount of rental paid by lessee.
Atlantic Avenue railroad, including Brooklyn, Bath and West End	$229,829 47
United Railroad Company	5,625 00
Coney Island and Gravesend Railway Company	12,949 72
Total amount of rentals deducted from income	$248,404 19

549 *Analysis of Gross Earnings and Operating Expenses.*

Earnings.

Cash fares	$1,554,629 60	
Chartered cars	2,925 11	
		$1,557,554 71
Mail		1,142 87
Total gross earnings		$1,558,697 58

Operating expenses.

General expenses:

Salaries of general officers and clerks	$43,685 65	
Miscellaneous expenses, general office	8,399 38	
Insurance	6,837 89	
Law expenses	51,728 58	
Injuries and damages	199,525 88	
Contingent expenses	20,723 02	
		$330,900 40

Conducting transportation:		
Car service	$509,856 27	
Car house expenses	50,860 70	
Operation of power house	48,556 79	
Fuel	67,664 15	
Rents for tracks, yards and terminals	24,203 25	
Hired power	20,807 58	
	$721,948 74	
Less sale of power	25,537 24	
		696,411 50
Maintenance of way and structures:		
Maintenance, repairs and renewals of tracks and roadway construction	$41,880 93	
Maintenance and repairs of overhead construction	29,765 29	
Maintenance, repairs and renewals of buildings	9,929 43	
Maintenance and rent of buildings	7,035 44	
Removal of snow and ice	17,337 16	
		105,948 25
Maintenance of equipment:		
Repairs of cars	$84,171 18	
Repairs of electrical equipment of cars	70,368 02	
Repairs of steam plant	5,348 89	
550 Repairs of electrical plant	1,437 95	
Repairs of tools and machinery	10,953 69	
Miscellaneous expenses	7,018 45	
		179,298 18
Total operating expenses		$1,312,558 33

Operating cost, 84.21 per cent. of earnings (excluding taxes).

Operating cost, 90.65 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

Operating cost, 14.75 cents per car mile (excluding taxes).

Cash Statement.

Receipts.

Cash on hand June 30, 1898	$87,971 19
Cash fares	1,554,629 60
Rent, Brooklyn Heights railroad	37,500 00
Chartered cars	2,889 34

Rent of real estate	2,041 01
Mail	2,739 22
Advertising	7,288 63
Bills payable (temporary loans)	320,000 00
Rent Long Island Railroad Company	50,000 00
Insurance	19,070 03
Reorganization	871,869 67
Accounts and bills payable	285,547 54
Supplies received from lessee	54,626 88
	$3,296,173 11

Disbursements.

Operating expenses	$1,340,264 79
Taxes on property used in operation	128,690 67
Taxes on earnings and capital stock	34,682 03
Taxes other than above	11,382 20
Interest on funded debt	288,292 70
Other interest	21,764 49
Rentals	137,952 07
Construction and equipment	207,074 11
Loans	1,019,774 07
Sundries	93,634 03
Cash on hand June 30, 1899	12,661 95
	$3,296,173 11

551 *General Balance Sheet, June* 30, 1899.

Assets.

Cost of road and equipment		$28,562,065 94
Other permanent investments, as follows, viz:		
Leasehold rights Coney Island and Gravesend railroad		150,000 00
Current assets as follows, viz:		
Cash on hand	$12,661 95	
Bills receivable	23,116 22	
Open accounts	114,242 79	
Additions and betterments	152,406 30	
		302,427 26
Profit and loss (deficiency)		410,781 89
		$29,425,275 09

Liabilities.

Capital stock		$15,000,000 00
Funded debt		13,500,000 00
Real estate mortgage		198,850 00
Current liabilities as follows, viz:		
Other interest accrued	$1,856 84	
Taxes accrued	73,156 31	
Loans	317,500 00	
Accounts payable	49,353 35	
Sundries	134,558 59	
		576,425 09
Coney Island and Gravesend Railway Company		150,000 00
		$29,425,275 09

Traffic, Mileage, and Miscellaneous Statistics.

Number of passengers carried, including transfers	39,930,208
Number of transfers	8,837,616
Number of transfer points	32
Total car mileage	8,895,483
Maximum speed, per hour, miles	15
Rate of fare per passenger	5c.
Cars are run every	½ to 30 min.
Average number of employees (including officials) during year	1,700 to 2,400
Aggregate amount of salaries and wages paid them	$795,647 03
552 Telephone owned and operated by company, miles	117.09
Stations, freight and express	2
Stations, passenger	2
Power houses	2
Car houses	9
Horses owned	33
Total assessed value of real estate and personal property of company	$3,126,097 00
Steam railroad crossings at grade protected	18
Steam railroad crossings over grade	5
Highway crossings at grade unprotected	14
Highway crossing over grade	1

Passenger cars are heated and lighted by electricity.

Characteristics of Road and Equipment.

Track.	Miles owned.	Miles leased.	Miles operated under trackage rights.	Total miles operated.
Single track, main line, electric	61.77	3.16	6.02	70.95
Second track, main line, electric	61.44	3.16	6.02	70.62
Sidings and turnouts, electric	6.60	.....	.....	6.60
Grand total, tracks, sidings and turnouts	129.81	6.32	12.04	148.17
Laid with steel rail	129.81	6.32	12.04	148.17

Weight of rails per yard—steel, maximum, 93 lbs.; minimum, 60 lbs. Gauge of track, 4 feet 8½ inches. Ballasted with cinders, stone and earth.

Equipment.	Number owned.		Equipped with fenders—Number.
	Motors.	Other than motors.	
Box cars	288	.....	288
Open cars	474	.....	474
Service cars	2	16	2
Snow-plows	12	.....	.....
Sweepers	7	.....	.....
Total	773	16	764

553 *Details of Roads Owned and Leased.*

Name of road or branch.	From—	To—	Miles owned.	Miles leased.	Miles trackage rights.	Total number of miles operated.
Nassau Electric R. R., Canarsie.	Broadway ferry	Canarsie	8.26		.15	8.41
Marcy Avenue	North 2d street	Sheepshead Bay	9.24		.45	9.69
Douglas Street	Rogers avenue	Liberty Ave. and city line.	4.70			4.70
Church Avenue	39th Street ferry	Rockaway Ave. and New Lots road.	6.14		.15	6.29
Fort Hamilton	5th Ave. & 17th St.	Fort Hamilton	3.21			3.21
86th Street	4th avenue	Bath Beach	1.84		.13	1.97
5th Avenue	South ferry	37th street	4.02			4.02
Butler Street	Atlantic & 5th Ave.	Rogers avenue	1.74			1.74
7th Avenue	Flatbush & 5th Ave.	9th Ave. and 20th St.	1.73		.34	2.07
15th Street	Hamilton ferry	9th Ave. and Greenwood cemetery.	1.49		1.27	2.76
Hicks Street	Hamilton avenue	Atlantic avenue	.81			.81
Bergen Street	Hamilton ferry	Buffalo avenue & Douglass street.	4.73		.25	4.98
Adams Street	Bergen & Hoyt Sts.	Fulton ferry	1.74		.24	1.98
Vanderbilt Ave.	9th Ave. & 20th St.	Fulton ferry	3.07		1.34	4.41
Furman Street	Atlantic avenue	Montague street			.28	.28
West End Division	39th St. and New Utrecht Ave.	Coney Island	5.46			5.46
Park Avenue	Vanderbilt Ave.	Evergreen cemetery	3.59		.24	3.83
Coney Island and Gravesend R. R.						
Surf Avenue	Sheepshead Bay	Sea Gate		3.16		3.16
N. Y. and Brooklyn Bridge.	Adams & Sands Sts.	Park row, Manhattan			1.18	1.18
Total			61.77	3.16	6.02	70.95

Salaries, Wages, etc., of Officers and Other Employees.

Officers and clerks.

	Annual salary.
General officers	$43,685 65

Other employees.

	Average number of hours on duty per day.	Wages, per day.
Conductors	10	$2.00
Motormen	10	2.00
Starters	10	2.00
Watchmen	10	$1.50 to 1.75
Switch Boys	10	.75
Roadmen	10	2.00 to 2.50
Hostlers	10	1.50 to 1.75
Linemen	10	2.50 to 2.75
Engineers	8	3.00
Firemen	8	2.00
Electricians	10	1.75 to 2.75
Machinists and mechanics	10	2.25 to 2.75
Laborers	10	1.50 to 1.75

554 *Recapitulation of Accidents.*

	Injured.	Killed.	Total.
Passengers	10	2	12
Employees		1	1
Others	10	9	19
Total	20	12	32

Total paid for injuries and damages caused by accidents:

Paid by the company $199,525.88

Officers of the Company.

Name.	Title.	Official address.
C. L. Rossiter	President	168 Montague street, Brooklyn, N. Y.
T. S. Williams	Sec. and treas.	168 Montague street, Brooklyn, N. Y.

Directors of the Company.

Name.	Residence.
John E. Borne	New York city.
Hugh J. Grant	New York city.
Wm. F. Creed	New York city.
Joseph D. Donald	New York city.
J. Ralph Burtnett	New York city.
T. S. Williams	Brooklyn, N. Y.
C. L. Rossiter	Brooklyn, N. Y.
Nicholas F. Brady	New York city.
W. H. Bailey	New York city.

Title of company, Nassau Electric Railroad Company.
General offices at 168 Montague street, Brooklyn, N. Y.
Date of close of fiscal year, March 31.
Date of stockholders' annual meeting, second Tuesday in April.
For information concerning this report, address T. S. Williams, secretary.

555 DEFENDANT'S EXHIBIT No. 18.

Nassau Electric, lessor.

Lessee, Brooklyn Heights.

(Date of charter, March 13, 1893.)

For history of organization, etc., see report of 1899.

Included in this report are the physical statistics of the following road, which is leased to this company:

Coney Island and Gravesend Railway Company.

On April 1, 1900, the lease of the railroad, property, franchises, etc., to the Brooklyn Heights Railroad Company was renewed for 999 years; lessee to pay as rental, in addition to interest on bonded indebtedness, taxes and organization expenses, all net earnings, which shall not be less, however, than 4 per cent. per annum on $6,500,000, par value of the lessor's cumulative preferred stock outstanding. On December 31, 1899, this company issued $1,500,000 of its consolidated mortgage bonds for purchase of capital stocks of Coney Island and Gravesend and Sea Beach Railroad Companies and for new equipment.

Capital Stock and Funded Debt.

Capital stock.

	Common.		Preferred.	
	Number of shares.	Total par value.	Number of shares.	Total par value.
Authorized by law or charter, issued on account of construction and acquirement of properties, and now outstanding.....	85,000	$8,500,000	65,000	$6,500,000

Grand total of common and preferred stock now outstanding..	$15,000,000 00
Number of stockholders.....	34

556 **Funded debt.**

Designation of lien.	Date.	Term, years.	Interest. Rate.	Interest. When payable.	Amount authorized.	Amount outstanding.
			p. c.			
Nassau consol. mtge	June 30, 1898	50	4	Jan. & July 1	*$15,000,000	$10,474,000
Nassau first mtge	April 1, 1894	50	5	Apr. & Oct. 1	660,000	660,000
Atlantic Av. first con. bonds	Sept. 30, 1884	25	5	Apr. & Oct. 1	732,000	732,000
Atlantic Av. gen mtge. bonds	Apr. 23, 1891	40	5	Apr. & Oct. 1	2,241,000	2,241,000
Atlantic Av. imp. mtge. bonds	Jan. 1, 1894	40	5	Jan. & July 1	220,000	220,000
B. B. W. E. first mtge. "A"	Dec. 28, 1886	10 to 20	5	Jan. & July 1	250,000	250,000
B. B. W. E. first mtge. "B"	Dec. 28, 1886	10 to 30	5	Apr. & Oct. 1	250,000	250,000
B. B. W. E. 2nd mtge "C"	July 1, 1891	20	5	June & Dec. 1	52,000	52,000
B. B. W. E. general mtge	Oct. 2, 1893	40	5	April & Oct. 1	121,040	12,040
Total					$19,526,040	$15,000,040

*$4,526,000 for retiring prior lien bonds of Nassau, Atlantic Avenue and B. B. and W. E. R. R. Co.

Per mile of road owned	61.77 miles.
Capital stock outstanding	$242,836 32
Funded debt outstanding	242,836 97

Cost of Road and Equipment.

Road.	Additions or betterments during year ending June 30, 1900.	Total cost of road and equipment up to June 30, 1900.
Track and roadway construction	$153,488 32	$260,779 52
Overhead construction		† 1,954 94
Reorganization expenses		47,861 30
Law expenses		45,409 75
Buildings and fixtures used in operation of road		45,893 85
Interest and discount charged to construction		22,683 33
Road built by contract		10,520,000 00
Purchase of constructed road and equipment	1,398,710 34	17,787,068 07
Equipment.		
Power station equipment	2,385 52	185,077 93
Motor (cable) cars		222,105 29
Horses and rolling stock other than cars		1,726 02
Purchased by contract		1,000,000 00
Grand total cost of road and equipment	$1,554,584 18	$30,116,650 12

† Credit.

Cost of road and equipment per mile of road owned... $487,561 11

557 *Details of Additions or Betterments During the Year.*

Construction of track and railway on franchises of Coney Island and Gravesend Railroad Company..			$152,406 30
On account of bridge crossing and crossing at Atlantic and Carlton avenues			1,082 02
Purchase of capital stock of Coney Island and Gravesend and Sea Beach Railroad Companies and equipment		$1,500,000 00	
Premium paid on 27 Atlantic Avenue railroad first consolidated bonds purchased		2,192 84	
		$1,502,192 84	
Less:			
Insurance received for building destroyed by fire	$50,959 16		
Sale of property	9,850 00		
For correction of charge to construction account January 31, 1899	42,774 66		
		$103,583 82	
			$1,398,609 02
New equipment		$15,167 35	
Less cars returned		15,066 03	
			101 32
Additions to power station			2,385 52
Total			$1,584,584 18

Income Account for Year Ending June 30, 1900.

Income from all sources as follows, viz.:	
Rental from Brooklyn Heights Railroad Company..	$177,500 00
Brooklyn Rapid transit agreement	400,000 00
Surplus for year ending June 30, 1900	$577,500 00
General income account:	
Deficit up to June 30, 1899	410,781 89
	$166,718 11
Correction of charge against income account for quarter ending June 30, 1899	48,281 89
Total surplus June 30, 1900	$215,000 00

558 *General Balance Sheet, June 30, 1900*

Assets.

Cost of road and equipment		$30,116,650 12
Other permanent investments, as follows, viz.:		
Treasury bonds		27,000 00
Current assets as follows, viz.:		
Cash on hand	$1,827 70	
Rental Brooklyn Heights Railroad Company	65,000 00	
Open accounts	274,671 24	
Damages and old claims paid	254,912 28	
		596,411 22
		$30,740,061 34

Liabilities.

Capital stock		$15,000,000 00
Funded debt		15,000,040 00
Current liabilities as follows, viz.:		
Accounts payable	$326,171 34	
Real estate mortgages	198,850 00	
		525,021 34
Profit and loss (surplus)		215,000 00
		$30,740,061 34

Characteristics of Road and Equipment.

Track.	Miles owned.	Miles leased.	Miles operated under trackage rights.	Total miles operated.
Single track, main line, electric	61.77	3.16	.505	65.435
Second track, main line, electric	61.44	3.16	.265	64.865
Sidings and turnouts, electric	6.49	.11	.....	6.600
Grand total, track, sidings and turnouts	129.70	6.43	.770	136.900
Laid with steel rail	129.70	6.43	.770	136.900

Weight of rails per yard—steel, maximum, 93 lbs.; minimum, 60 lbs. Gauge of track, 4 feet 8½ inches. Ballasted with cinders, stone and earth.

559 Equipment.	Number owned, motor.	Number equipped with fenders.
Box cars	325	325
Open cars	675	675
Freight cars	2	.....
Service cars	9	9
Snow plows	9	.....
Sweepers	8	.....
Total	1,028	1,009

Details of Roads Owned or Leased.

Name of road or branch.	From—	To—	Miles owned.	Miles leased.	Miles trackage rights.	Total number of miles operated.
Nassau Electric R. R., Canarsie.	Broadway ferry	Canarsie	8.26	.....	.20	8.46
Marcy Avenue	North 2d street	Sheepshead Bay	9.24	.....	.70	9.94
Douglass Street	Rogers avenue	Liberty avenue and city line.	4.70	.....	.....	4.70
Church Avenue	39th Street ferry	Rockaway Ave. and New Lots road.	6.11	.....	.....	6.11
Fort Hamilton	5th Ave. & 37th St	Fort Hamilton	3.21	.....	.....	3.21
86th Street	5th avenue	Bath beach	1.84	.....	.....	1.84
5th Avenue	South ferry	37th street	4.02	.....	.....	4.02
Butler Street	Atlantic & 5th Ave	Rogers avenue	1.74	.....	.....	1.74
7th Avenue	Flatbush & 5th Ave	9th Ave. and 20th St	1.73	.....	.....	1.73
15th Street	Hamilton ferry	9th Ave. and Greenwood cemetery.	1.49	.....	.....	1.49
Hicks Street	Hamilton avenue	Atlantic avenue	.84	.....	.....	.84
Bergen Street	Hamilton ferry	Buffalo Ave. & Douglass street.	4.73	.....	.....	4.73
Adams Street	Bergen & Hoyt Sts	Fulton ferry	1.71	.....	.....	1.71
Vanderbilt Avenue	9th Ave. & 20th St	Fulton ferry	3.07	.....	.....	3.07
West End Division	39th St. and New Utrecht Ave.	Coney Island	5.46	.....	.....	5.46
Park Avenue	Vanderbilt Ave	Evergreen cemetery	3.59	.....	.....	3.59
Coney Island and Gravesend R. R.						
Surf Avenue	Sheepshead Bay	Sea Gate	.....	3.16	.....	3.16
Total			61.77	3.16	.90	65.43

Officers of the Company.

Name.	Title.	Official address.
C. L. Rossiter	President	168 Montague street Brooklyn, N. Y.
T. S. Williams	Vice-president	168 Montague street, Brooklyn, N. Y.
C. D. Meneely	Sec. and treas.	168 Montague street, Brooklyn, N. Y.

560 *Directors of the Company.*

Name.	Residence.
John E. Borne	New York city.
Hugh J. Grant	New York city.
E. H. Harriman	New York city.
Joseph D. Donald	New York city.
A. R. Flower	New York city.
T. S. Williams	Brooklyn, N. Y.
C. L. Rossiter	Brooklyn, N. Y.
Nicholas F. Brady	New York city.
A. N. Brady	Albany, N. Y.

Title of company, Nassau Electric Railroad Company.
General offices at 168 Montague street, Brooklyn, N. Y.
Date of close of fiscal year, March 31.
Date of stockholders' annual meeting, second Tuesday in April.
For information concerning this report, address C. D. Meneely, secretary and treasurer.

DEFENDANT'S EXHIBIT No. 19.

Coney Island and Gravesend Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending September 30, 1900.

1900.

Gross earnings from operation	$18,582 52
Operating expenses (excluding all taxes)	16,598 77
Net earnings from operation	1,983 75
Income from other sources than operation	.....
Gross income from all sources	1,983 75

Deductions from income, as follows:		
Interest on funded debt	.....	.....
Taxes—		
On property used in operation of road	.....	.....
On earnings and capital stock	$185 82	
Other than above	.....	.....
Rentals	.....	.....
		185 82
Net income from all sources		797 93
561 Net income, as previously reported, for preceding quarters in this fiscal year		.....

DEFENDANT'S EXHIBIT No. 20.

Coney Island and Gravesend Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending December 31, 1900.

1900.

Gross earnings from operation		$3,205 65
Operating expenses (excluding all taxes)		2,856 23
Net earnings from operation	.....	349 42
Income from other sources than operation		.....
Gross income from all sources		349 42
Deductions from income, as follows:		
Interest on funded debt	.....	
Taxes—		
On property used in operation of road	.....	
On earnings and capital stock	$32 05	
Other than above	.....	
		32 05
Rentals	.....	.....
Net income from all sources		317 37
Net income, as previously reported, for preceding quarters in this fiscal year		1,797 93

Operating cost 89.10 per cent. of earnings (excluding all taxes).

Operating cost 90.10 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

562 Coney Island and Gravesend Railway Company.

General Balance Sheet, December 31, 1900, *as Reported to State Board of Railroad Commissioners.*

Assets.

Cost of road and equipment	$35,400 00
Stocks and bonds of other companies	.....
Other permanent investments	....
Supplies on hand	....
Accrued interest	.....
Due by agents of this company on account of traffic	.....
Due by others (not agents of this company) on account of traffic	.....
Due by companies and individuals (on open accounts other than traffic)	4 60
Cash on hand	2,663 30
Profit and loss (deficiency)	.....
	$38,067 90

Liabilities.

Capital stock, common	$35,400 00
Capital stock, preferred	.....
Funded debt	.....
Loans and bills payable	.....
Interest on funded debt due and accrued	.....
Dividends unpaid	.....
Due for wages and supplies	.....
Due companies and individuals (on open accounts)	531 22
Taxes accrued	21 79
Profit and loss (surplus)	2,114 89
	$38,067 90

563 DEFENDANT'S EXHIBIT No. 21.

Kings County Elevated Railway Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1899.

1899.

Leased to Brooklyn Heights October 1, 1899.

Gross earnings from operation		$205,085 61
Operating expenses (excluding all taxes)		174,213 80
Net earnings from operation		30,871 81
Income from other sources than operation		452 11
Gross income from all sources		31,323 92
Deductions from income, as follows:		
Interest on funded debt		
Interest on receiver's certificates	$5,666 67	
Taxes—		
On property used in operation of road	8,714 10	
On earnings and capital stock	2,050 85	
Other than above	282 96	
Rentals	5,000 00	
Interest on mortgages, etc	722 53	
		22,437 11
Net income from all sources		8,886 81
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost, 84.95 per cent. of earnings (excluding all taxes).

Operating cost, 92.63 per cent. of earnings (including taxes on all property actually used in operation of road, and on earnings and capital stock).

564 DEFENDANT'S EXHIBIT No. 22.

Kings County Elevated Railway Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending June 30, 1899.

1899.

Gross earnings from operation		$174,314 11
Operating expenses (excluding all taxes)		153,188 99
Net earnings from operation		21,125 12
Income from other sources than operation		5,415 27
Gross income from all sources		26,540 39
Deductions from income, as follows:		
Interest on funded debt		
Taxes—		
On property used in operation of road	88,717 36	
On earnings and capital stock	1,786 40	
Other than above	362 07	
Rentals		
Interest on loans, mortgages, etc	10,197 67	
Interest on receiver's certificates	6,000 00	
		27,063 50
Net income from all sources (deficit)		523 11
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost 87.88 per cent. of earnings (excluding all taxes).
Operating cost 93.91 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

565 DEFENDANT'S EXHIBIT No. 23.

Kings County Elevated Railway Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Two Months Ending September 30, 1899.

1899.

Gross earnings from operation		$106,074 97
Operating expenses (excluding all taxes)		93,364 44
Net earnings from operation		12,710 53
Income from other sources than operation		187 77
Gross income from all sources		12,898 30
Deductions from income, as follows:		
Interest on funded debt	$33,333 34	
Taxes—		
On property used in operation of road	5,944 64	
On earnings and capital stock	1,060 85	
Other than above	280 20	
Rentals		
		40,619 03
Net income from all sources (deficit)		27,720 73
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost, 88.02 per cent. of earnings (excluding all taxes).

Operating cost, 94.87 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

566 DEFENDANT'S EXHIBIT No. 24.

James H. Frothingham, receiver of Kings County Elevated Railway Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending September 30, 1899.

(Including the last month of the receiver's operation of the railway, July, 1899, only.)

Gross earnings from operation		$852,543 45
Operating expenses (excluding all taxes)		49,597 90
Net earnings from operation		2,945 55
Income from other sources than operation		907 95
Gross income from all sources		3,853 50
Deductions from income, as follows:		
Interest on funded debt	$775 00	
Receiver's certificates:		
Taxes—		
On property used in operation of road	2,392 81	
On earnings and capital stock	525 98	
Other than above	69 82	
Rentals		
		3,763 61
Net income from all sources		89 89
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost 94.39 per cent. of earnings (excluding all taxes).

Operating cost 99.95 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

567 DEFENDANT'S EXHIBIT No. 25.

James H. Frothingham, receiver of Kings County Elevated Railway Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending December 31, 1899.

1899.

Gross earnings from operation	.....
Operating expenses (excluding all taxes)	$1,399 32
Net deficit from operation	1,399 32
Income from other sources than operation	311 06
Gross deficit from all sources	1,088 26
Net deficit from all sources	1,088 26

DEFENDANT'S EXHIBIT No. 26.

Kings County Elevated Railway Company.

General Balance Sheet, December 31, 1899, *as Reported to State Board of Railroad Commissioners.*

Assets

Cost of road and equipment	$15,279,747 91
Stocks and bonds of other companies	.....
Other permanent investments	.....
Supplies on hand	10,585 16
Accrued interest	.....
Due by agents of this company on account of traffic	.....
Due by others (not agents of this company) on account of traffic	.....
568 Due by companies and individuals (on open accounts other than traffic)	9,382 51
Cash on hand	54,384 09
Receiver's account with K. C. E. Ry. Co	470,540 74
Suspense account	5,493 46
Profit and loss (deficiency)	1,326,603 99
	$17,216,737 86

Liabilities.

Capital stock, common	$4,750,000 00
Capital stock, preferred	.....
Funded debt	10,978,437 00
Loans and bills payable	.....
Interest on funded debt due and accrued	460,172 23
Dividends unpaid	.....
Due for wages	.....
Due companies and individuals (on open accounts)	290 33
S. M. bond and coupon debentures	.....
Interest in process of funding	59 00
Due for supplies	28,862 96
Taxes	8,631 06
K. C. E. Ry. Co. acc't with receiver	470,540 74
Reorganization committee	519,744 54
Profit and loss (surplus)	.....
	$17,216,737 86

569 DEFENDANT'S EXHIBIT No. 27.

Kings County Elevated Railway Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Year Ending December 31, 1899.

Gross earnings from operation		$538,018 14
Operating expenses (excluding all taxes)		471,764 45
Net earnings from operation		66,253 69
Income from other sources *other* than operation		7,274 16
Gross income from all sources		73,527 85
Deductions from income, as follows:		
Interest on funded debt	$33,333 34	
Taxes—		
On property used in operation of road	25,768 91	
On earnings and capital stock	5,424 08	
Other than above	995 05	
Rentals	5,000 00	
Interest on mortgages	10,920 20	
Interest on receiver's certificates	12,441 67	
		93,883 25
Net deficit from all sources		20,355 40
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost, 88.81 per cent. of earnings (excluding all taxes).
Operating cost 95.31 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

570 DEFENDANT'S EXHIBIT No. 28.

Brooklyn Union Elevated Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1899.

1899.

Gross earnings from operation		$511,764 28
Operating expenses (excluding all taxes)		299,571 37
Net earnings from operation		212,192 91
Income from other sources than operation		214 85
Gross income from all sources		212,407 76
Deductions from income as follows:		
Interest on funded debt	$61,380 95	
Taxes—		
On property used in operation of road	1,385 61	
On earnings and capital stock	5,119 79	
Other than above	16,949 31	
Rentals	20,076 56	
Interest on loans		104,912 22
Net income from all sources		107,495 54
Net income, as previously reported, for preceding quarters in this fiscal year		171,599 83

Operating cost, 58.54 per cent. of earnings (excluding all taxes).
Operating cost, 63.12 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

571 DEFENDANT'S EXHIBIT No. 29.

Brooklyn Elevated.

Income Account of Receiver from July 1, 1898, to February 16, 1899, Inclusive.

(Date of charter, May 26, 1874.)

For history of organization, etc., see report of 1897.

On February 17, 1899, the receiver, Frederick Uhlmann, delivered the railroad and property to Brooklyn Union Elevated Railroad Company. For details of sale, reorganization, etc., see report of latter-named company, following this volume.

Capital Stock and Funded Debt, as per Last Report.

Capital stock.

	Common.	
	Number of shares.	Total par value.
Authorized by law or charter	132,836	$13,283,600
Issued on account of construction	50,000	$5,000,000
Issued in exchange for Union Elevated R. R. Co.'s stock	82,836	8,283,600
Total now outstanding	132,836	$13,283,600

Number of stockholders 235

Funded debt.

Designation of lien.	Date.	Term, years.	Interest. Rate.	Interest. When payable.	Amount authorized.	Amount outstanding.	Cash realized on amount outstanding.
			p. c.				
First mtg.	Oct. 1, '84	40	6	April & Oct.	$3,500,000	$3,500,000	.....
Second mtg.	July 1, '85	50	5	Jan. & July	1,250,000	1,250,000	.....
First mtg., Un.	May 2, '87	50	6	May & Nov.	7,000,000	6,150,000	$6,150,000
Sec. mtg., inc.	May 2, '87	40	5	Jan. & July	2,500,000	2,008,000	.....
Total					$14,250,000	$12,908,000	$6,150,000

Per mile of road owned	18 miles.
Capital stock outstanding	$737,977 00
Funded debt outstanding	720,444 00

572 *Cost of Road and Equipment as per Last Report.*

Road.

	Total cost of road and equipment up to June 30, 1899.
Grading, masonry, ballast, bridges, superstructure (including ties) and rails	$305,519 99
Land	138,921 72
Land damages	436,378 13
Passenger stations	46,839 62
Engine and car houses	12,107 22
Shops, machinery and tools	35,857 27
Fuel and water stations	41,782 77
Engineering expenses	21,000 31
Road built and equipped by contract	25,766,628 13
Office furniture and fixtures	1,815 05
Total cost of road	$26,806,860 21

Equipment.

Locomotives	$4,423 74
Passenger cars	177,390 42
Freight and other cars	571 70
Total cost of equipment	$182,385 86
Grand total cost of road and equipment	$26,989,246 07
Miles of road owned	18
Cost of road and equipment per mile of road owned	$1,499,402

Receiver's Income Account, July 1, 1898, to February 16, 1899, Inclusive.

Gross earnings from operation		$1,125,271 31
Less operating expenses (excluding all taxes)		751,887 37
Gross income from all sources		$373,383 94
Deductions from income, as follows, viz.:		
Taxes on property used in operation of road	$111,924 03	
Taxes on earnings	11,252 71	
		123,176 74
Surplus February 16, 1899		$250,207 20

573 *Analysis of Gross Earnings and Operating Expenses.*

Earnings.

Passengers	$1,054,783 45
Advertising and news privileges	23,750 00
Telephone and electric light company	11,458 24
Electric railroad company	7,460 56
Slot machines, etc	11,075 60
Bridge division	16,743 46
Total gross earnings	$1,125,271 31

Operating Expenses.

Maintenance of way and structures:

Repairs of track	$24,522 25
Renewals of rails	2,058 24
Renewals of ties	4,892 25
Repairs of foundations and structures	14,939 09
Repairs and renewals of buildings and fixtures	6,560 91
Repairs, conductor, rail and fixtures	149 31
Repairs of telegraph and telephone	950 60
Stationery and printing	29 61
Other expenses	146 10
Total	$54,248 36

Maintenance of equipment:

Superintendence	$4,880 53
Repairs of locomotives	33,820 86
Repairs of passenger cars	38,217 78
Repairs of electrical equipment of cars	93 67
Repairs of coal and supply cars	307 90
Repairs of shop machinery and tools	1,684 68
Stationery and printing	316 11
Other expenses	3,940 85
Total	$83,262 38

Conducting transportation:

Superintendence	$2,727 52
Engine and roundhouse men	156,378 14
Fuel for locomotives	164,162 50
Water supply for locomotives	8,928 88

	Oil, tallow and waste for locomotives	2,707 98
574	Other supplies for locomotives	780 84
	Train service	77,061 87
	Train supplies and expenses	33,381 74
	Switchmen, flagmen and watchmen and couplers	32,767 73
	Motor supplies	51 18
	Station service	75,492 28
	Station supplies and expenses	6,514 78
	Car mileage	762 27
	Hire of power	2,300 05
	Loss and damage	363 97
	Injuries to persons	4,985 51
	Clearing wrecks	14 58
	Advertising	3,725 99
	Rents for tracks, yards and terminals	3,581 85
	Stationery and printing	2,483 81
	Other expenses	465 72
	Total	$579,639 19

General expenses:

	Salaries of general officers	$8,443 66
	Salaries of clerks and attendants	9,453 21
	General office expenses and supplies	1,623 83
	Insurance	2,243 17
	Law expenses	6,821 69
	Stationery and printing (general offices)	1,972 02
	Other expenses	4,179 86
	Total	$34,737 44
	Grand total operating expenses	$751,887 37

Operating cost, 66.82 per cent. of earnings (excluding taxes).

Operating cost, 77.76 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

Per mile of road operated (20.34 miles): Gross earnings, $55,323.07; expenses, $36,965.94; net earnings, $18,357.13.

For information concerning this report, address T. S. Williams, secretary and treasurer, Brooklyn Union Elevated Railroad Company, 168 Montague street, Brooklyn, N. Y.

575 Brooklyn Union.

Operating Report to March 31, 1899; *Lessor Report from April* 1, 1899, *to June* 30, 1899.

(Date of charter, January 30, 1899.)

The property and franchises of the Brooklyn Elevated Railroad, Union Elevated Railroad and Sea Side and Brooklyn Bridge Elevated Railroad Companies were sold on November 10, 1898, under and by virtue of a judgment and decree of the supreme court of this State, which decree bears date March 3, 1898, and was entered and filed in the office of the clerk of the county of Kings March 7, 1898, which property and franchises were purchased by Frederick P. Olcott, chairman, acting for and on behalf of the reorganization committee, and thereupon, in association with the said reorganization committee, caused the Brooklyn Union Elevated Railroad Company to be organized.

By the terms of the reorganization agreement it was provided that the new corporation should issue $16,000,000 first mortgage bonds bearing interest at 4 per cent. to February 1, 1905, and thereafter at 5 per cent.; $5,000,000 preferred stock, 5 per cent. per annum (non-cumulative), and $13,000,000 common stock. Of these securities $12,889,300 first mortgage bonds, $3,830,160 preferred stock and $12,926,700 common stock was issued to reorganization committee in furtherance of reorganization plan. Certificate of incorporation filed and recorded in the office of the secretary of state January 30, 1899. Railroad and property delivered by Frederick Uhlmann, receiver, to company, February 17, 1899. Railroad leased to Brooklyn Heights Railroad Company for one year from April 1, 1899, at an annual rental of $100,000. Lessee to pay interest on funded debt and all taxes on railroad property, earnings, etc., of lessor company from date of lease.

576 The present report is that of an operating company from February 17, 1899, to March 31, 1899, and thereafter that of a lessor company.

Capital Stock and Funded Debt.

Capital stock.

	Common.		Preferred.	
	Number of shares.	Total par value.	Number of shares.	Total par value.
Authorized by law or charter	130,000	$13,000,000	50,000	$5,000,000
Issued for property and now outstanding	129,267	12,926,700	38,301.6	3,830,160

Grand total of common and preferred stock now outstanding $16,756,860 00

Number of stockholders 570

Funded debt.

Designation of lien.	Date.	Term, years.	Interest.		Amount authorized.	Amount outstanding.
			Rate.	When payable.		
First mortgage	Feb. 1, 1899	51	*p. c. 4 & 5	Feb. & Aug.	$16,000,000	†$12,800,000

* Four per cent. until February 1, 1905; 5 per cent. thereafter.
† Issued for property.

Per mile of road owned	20.34 miles.
Capital stock outstanding	$823,837 75
Funded debt outstanding	633,726 64

Cost of Road and Equipment.

Road.

	Total cost of road and equipment up to June 30, 1899.
Superstructure (including ties)	$85 02
Land	1,500 36
Land damages	2,996 69
Purchase of constructed road and equipment	29,337,867 54

577

Equipment.

Passenger cars	5,619 24
Grand total cost of road and equipment	$29,348,068 85
Cost of road and equipment per mile of road owned	$1,442,874 57
Miles of road owned	20.34

Details of Construction and Equipment Account.

Electrical equipment of track	$85 02
Payment on account of property purchased	1,500 36
Easements acquired by condemnation and purchase	2,996 69
New walkover seats in cars	5,619 24
For property acquired under reorganization agreement	29,337,867 54
	$29,348,068 85

* *Income Account for Period from February 17, 1899, to June 30, 1899.*

Gross earnings from operation, February 17, 1899, to March 31, 1899		$251,070 28
Less operating expenses (excluding all taxes) February 17, 1899, to March 31, 1899		139,963 43
Net earnings from operation		$111,106 85
Income from other sources as follows, viz.:		
Interest	$1,148 13	
Rent from B. H. R. R. Co. under lease for three months ending June 30, 1899	25,000 00	
		26,148 13
Gross income from all sources		$137,254 98
Deductions from income, as follows, viz.:		
Interest on funded debt, due and accrued, from February 17, 1899, to March 31, 1899	$61,380 95	
Taxes on property used in operation of road	$18,327 03	
578 Taxes on earnings and capital stock	2,510 70	
	20,837 73	
Sundry expenses	1,838 03	
		84,056 71
Surplus for period from February 17, 1899, to June 30, 1899		$53,198 27

General Income Account.

Surplus for period ending June 30, 1899	$53,198 27
Less amount charged direct to profit and loss	3,011 99
Total surplus June 30, 1899	$50,186 28

* Operating from February 17 to March 31. Lessor from April 1 to June 30.

Analysis of Gross Earnings and Operating Expenses.

Earnings.

Passengers	$240,956 55
Advertising and news privileges	4,750 00
Telegraph, telephone and electric light companies	2,042 86
Electric railroad companies	1,436 44
Slot machine privileges, rents and bicycles	1,884 43
Total gross earnings	$251,070 28

Operating expenses.

Maintenance of way and structures:

Repairs of foundations and structure	$454 24
Repairs track	3,554 95
Renewals of steel rails	123 40
Renewals of ties	178 71
Repairs of buildings and fixtures	343 66
Repairs of telegraph and telephone	289 78
Stationery and printing	1 32
Other expenses	104 60
Total	$5,050 66

Maintenance of equipment:

Superintendence	$974 79
Repairs of locomotives	6,182 13
Repairs of passenger cars	5,372 15
Repairs coal and supply cars	76 75
579 Repairs of electrical equipment of cars	6 16
Repairs of shop machinery and tools	319 75
Stationery and printing	35 54
Other expenses	1,036 46
Total	$14,003 73

Conducting transportation:

Superintendence	$384 36
Engine and roundhouse men	28,654 04
Fuel for locomotives	34,398 44
Water supply for locomotives	1,932 49
Oil, tallow and waste for locomotives	523 88
Other supplies for locomotives	150 62
Hire of power	491 29

Train service	14,777 40
Motor supplies	6 62
Train supplies and expenses	7,503 60
Switchmen, flagmen, couplers and yardmen	5,858 75
Station service	14,414 65
Station supplies and expenses	1,577 13
Loss and damage	63 28
Injuries to persons	578 85
Advertising	41 95
Rents for yards and terminals	603 56
Stationery and printing	623 52
Other expenses	26 92
Total	$112,611 35

General expenses:

Salaries of general officers	$3,423 64
Salaries of clerks and attendants	1,803 89
General office expenses and supplies	397 55
Insurance	438 20
Law expenses	1,263 32
Stationery and printing (general offices)	158 45
Other expenses	812 64
Total	$8,297 69
Grand total operating expenses	$139,963 43

Operating cost, 55.74 per cent. of earnings (excluding taxes).

Operating cost, 64.04 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

Per mile of road operated (20.34 miles): Gross earnings, $12,343.67; expenses, $6,881.19; net earnings, $5,462.48.

580 *General Balance Sheet, June* 30, 1899.

Assets.

Cost of road and equipment		$29,348,068 85
Current assets as follows, viz:		
Cash on hand	$66,461 53	
Bills receivable	125,000 00	
Open accounts	9,517 93	
Reorganization committee	333,544 84	
		534,524 30
		$29,882,593 15

Liabilities.

Capital stock		$16,756,860 00
Funded debt		12,890,000 00
Current liabilities as follows, viz:		
Taxes due and accrued	$32,123 65	
Open accounts	151,454 36	
Sundries	1,968 86	
		185,546 87
Profit and loss (surplus)		50,186 28
		$29,882,593 15

Traffic and Mileage Statistics for Nine Months Ending March 31, 1899 (*Including Statistics of Brooklyn Elevated*).

Item.

Number of passengers carried	25,913,844
Passenger train mileage	2,643,269
All other train mileage	10,955

Item.	Earnings.	Expenses.	Profit.
Passenger earnings and expenses (including mail, express and miscellaneous earnings)	$1,376,341 59	$891,850 80	$484,490 79
Average per passenger carried	0530	0344	0186
Average per passenger train mile	5203	3374	1829

581 *Description of Road and Equipment.*

Track.

	Miles owned, all in N. Y. State.
Main line, single track	20.34
Second track on main line	20.34
Sidings and turnouts on main line	1.30
Grand total of tracks, sidings and turnouts	41.98
Laid with steel rail, main line	20.34

Weight of rails per yard—steel maximum, 85 lbs minimum, 60 lbs. Gauge of track, 4 feet 8½ inches.

Equipment.	Number owned.	Average cost of each.	Maximum weight of each, pounds.	Number equipped with power brake.
Locomotives, 4 drivers	95	$3,249 10 4,600 00 5,175 00	42,600 45,000 50,000	95
First-class passenger cars	285	$2,950 00 3,333 00	25,000 26,000	285
Electric motor cars	12	$8,400 00	60,000	12
Coal cars	8	480 00	19,000	8
Flat cars	7	432 50	16,000	7
Service cars	1			1
Total	28			28

Eames vacuum brake and link coupler are in use on passenger and freight cars.

Split, Safety and Pennsylvania Steel Company's pattern switches in use.

Miscellaneous Statistics.

Item.	Entire line in New York State.
Telegraph owned and operated by company, miles	20.34
Total assessed value of real estate and personal property of company	$4,429,700 00
Length of steel rails laid during year in repairs, miles	1.98
Number of new ties placed during the year	8,332
Steam railroad crossings under grade	2

Passenger cars are heated by perfected Baker heater, lighted by oil and ventilated by deck roof ventilators.

582 *Number of Accidents.*

Number of accidents.	Injured.	Killed.	Total.
Passengers	3	2	5
Employees	4	4	8
Others		3	3
Total	7	9	16

Average number of persons (including officials) employed during 9 months	1,200
Aggregate amount of salaries and wages paid them during 9 months	$578,544 64

Officers of the Company.

Name.	Title.	Official address.
C. L. Rossiter	President	168 Montague street, Brooklyn, N. Y.
Wm. Halls, Jr	Vice-president	168 Montague street, Brooklyn, N. Y.
T. S. Williams	Sec. and treas	168 Montague street, Brooklyn, N. Y.

Directors of the Company.

Name.	Residence.
Frederic P. Olcott	New York city.
Wm. Halls, Jr	Summit, N. J.
Frederick Uhlmann	New York city.
W. F. Sheehan	New York city.
Nicholas F. Brady	Albany, N. Y.
Fred S. Flower	New York city.
John S. George	Milwaukee, Wis.
Ira A. Kip, Jr	South Orange, N. J.
John B. Taylor	Watertown, N. Y.
John V. Clarke	New York city
Harry T. Folger	New York city.
T. S. Williams	Brooklyn, N. Y.
C. L. Rossiter	Brooklyn, N. Y.

Title of company, Brooklyn Union Elevated Railroad Company.
General offices at 168 Montague street, Brooklyn, N. Y.
Date of close of fiscal year, June 30.
Date of stockholders' annual meeting, first Wednesday in April.
For information concerning this report, address T. S. Williams, secretary and treasurer.

583 DEFENDANT'S EXHIBIT No. 30.

Brooklyn Union Elevated, lessor.

Lessee, Brooklyn Heights (street railroad).

(Date of charter, January 30, 1899.)

For history of organization, etc., see report of 1899.
On May 18, 1900, this company purchased all the capital stock ($8,800,000) of the Kings County Elevated Railroad Company,

together with an agreement of the Brooklyn Rapid Transit Company to expend $1,500,000 for electric reconstruction, additions and improvements of the Kings County Elevated railroad, or of any railroad with which said railroad might be merged. Thereafter, on May 24, 1900, said Kings County Elevated Railroad Company was merged into and with this company, as per certificate filed with the secretary of state on that date. The capital stock of the Kings County Elevated Railroad Company was canceled after the merger. In May, 1900, the company issued the following securities, the proceeds of which were used in payment of the cost of the above property:

$3,110,700 00 first mortgage bonds.
1,169,840 09 preferred stock.
73,300 00 common stock.

Trains were operated by electricity on the Fifth Avenue line throughout the past fiscal year. Electric service between East New York and Brooklyn bridge was begun in July, 1900.

584 *Capital Stock and Funded Debt.*

Capital stock.

	Common.		Preferred.	
	Number of shares.	Total par value.	Number of shares.	Total par value.
Authorized by law or charter, issued for property and now outstanding	130,000	$13,000,000	50,000	$5,000,000

Grand total of common and preferred stock now outstanding $18,000,000 00
Number of stockholders 555

Funded debt.

Designation of lien.	Date.	Term, years.	Interest. Rate.	Interest. When payable.	Amount authorized.	Amount outstanding.	Cash required on amount outstanding.
First mtg. Brooklyn Union.	Dec. Feb. 1	50	4*	Feb. & Aug.	$3,000,000	$3,000,000	$3,110,700
First mortgage Kings County	July 25	50	4	Feb. & Aug.	2,000,000	2,000,000	2,000,000
Total					$5,000,000	$5,000,000	$5,110,700

* Four per cent. until February 1, 1905, and 5 per cent. from February 1, 1905.

Per mile of road owned	37 miles.
Capital stock outstanding	$184,486 49
Cash realized on same	.....
Funded debt outstanding	621,621 62
Cash realized on same	138,127 03

585 *Cost of Road and Equipment.*

Road.	Additions or betterments during year ending June 30, 1900.	Total cost of road and equipment up to June 30, 1900.
Reconstruction and electrical equipment of track	$236,370 95	$236,455 97
Rails	46,768 05	46,768 05
Land	36,451 55	37,951 91
Land damages	17,902 64	20,899 33
Passenger and freight stations	28,226 77	28,226 77
Shops, machinery and tools	1,435 83	1,435 83
Engineering expenses	1,500 00	1,500 00
Purchase of constructed roads and equipment	9,901,124 48	39,238,992 02
Buildings and fixture not used in operation of road	7,448 23	7,448 23
Storage batteries and buildings	80,807 28	80,807 28
Equipment.		
Passenger cars	172,992 37	178,611 61
Grand total cost of road and equipment	$10,531,028 15	$39,879,097 00

Cost of road and equipment per mile of road owned	$1,077,813 43
Miles of road owned	37

Details of Additions or Betterments During the Year.

Reconstruction and electrical equipment of track	$236,370 95
Steel rails used in reconstruction	46,768 05
Payments for account of property purchased	36,451 55
Easements acquired by condemnation and purchase	17,902 64
Transfer station at Ridgewood, extension Bridge Street station, furniture and fixtures	28,226 77
Extension of shop at Thirty-sixth street and Fifth avenue	1,435 83
Engineering expenses in connection with electrical equipment	1,500 00
Additions to buildings and grounds	7,448 23
Storage battery plants, equipment and buildings	80,807 28
Twenty-five passenger cars and electrical equipment of cars	172,992 37

	Settlement of judgments and old claims against Brooklyn Elevated Railroad Company	$7,983 37	
	Cost of Kings County Elevated Railroad property and franchises	9,920,188 04	
		$9,928,171 41	
586	Less amount received from reorganization committee of Brooklyn Elevated Railroad Company and from trustees of Brooklyn Elevated Railroad Company, first mortgage	27,046 93	
			9,901,124 43
	Total		$10,531,028 15

Income Account for Year Ending June 30, 1900.

Income from all sources as follows, viz:		
Interest		$10,565 98
Miscellaneous		71 52
Rentals from Brooklyn Heights Railroad Company, under lease for year ending June 30, 1900		100,000 00
Gross income from all sources		$110,637 50
Deductions from income as follows, viz:		
Legal expenses	$4,028 44	
Sundry expenses	3,480 02	
		7,508 46
Surplus for year ending June 30, 1900		$103,129 04

General Income Account.

Surplus for year ending June 30, 1900	$103,129 04
Surplus up to June 30, 1899	50,186 28
Total surplus June 30, 1900	$153,315 32

General Balance Sheet, June 30, 1900.

Assets.

Cost of road and equipment		$39,879,097 00
Current assets as follows, viz:		
Cash on hand	$629 97	
Bills receivable	150,000 00	
Open accounts	6,315 80	
Construction contract	1,500,000 00	
		1,656,945 77
		$41,536,042 77

587

Liabilities.

Capital stock		$18,000,000 00
Funded debt		23,000,000 00
Current liabilities as follows, viz:		
Taxes, due and accrued	$31,925 81	
Audited vouchers and pay-rolls	6 00	
Open accounts	218,733 21	
Receiver B. E. R. R. Co.	132,062 43	
		382,727 45
Profit and loss (surplus)		153,315 32
		$41,536,042 77

Description of Road and Equipment.

Track.

	Miles owned, all in N. Y. State.
Main line and branches, single track	37.000
Second track on main line and branches	37.000
Sidings and turnouts on main line and branches	13.737
Grand total of tracks, sidings and turnouts	87.737
Laid with steel rail, main line and branches	87.737

Weight of rails per yard—steel, maximum, 85 lbs.; minimum, 60 lbs. Gauge of track, 4 feet 8½ inches.

Details of Main Line and Branches.

Name of branch or road.	From—	To—	Entire length in N. Y. State.
Main line	Fulton street	Jamaica avenue	8.245
Fifth Avenue line	Myrtle avenue	Sixty-seventh street and Third avenue.	5.160
Broadway line	Broadway ferry	Lexington avenue	2.780
Myrtle Avenue line	Fulton ferry	Wyckoff avenue	4.130
Fulton Street line	Fulton ferry	City line	8.385
Brighton Beach line	Fulton street	Coney island	8.300
			37.000

Equipment.	Number owned.	Number leased.	Total number.	Average cost of each.	Maximum weight of each, pounds.	Number equipped with power brake.
Locomotives, 4 drivers	142	.....	142	$4,600	45,000	142
Electric motor cars	352	20	372	$2,530 8,400	67,000	372
First class passenger cars, box	419	72	491	2,950 3,333	25,000 26,000	491
Open passenger cars	61	.....	61	.....	.....	61
Total	852	92	924	.....	.....	924
Box freight cars	1	.....	1	$480	20,000	.....
Coal freight cars	8	....	8	480	19,000	8
Flat freight cars	17	.....	17	430	16,000	17
Service cars	2	.....	2	450	20,000	.....
Total	28	.....	28	.....	.....	25

Eames vacuum, Christensen and Westinghouse air brakes and link and pin and Van Dorn couplers are used on cars.

Pennsylvania Steel Company's pattern split safety switch is in use.

Officers of the Company.

Name.	Title.	Official address.
C. L. Rossiter	President	168 Montague street, Brooklyn, N. Y.
T. S. Williams	Vice-president	168 Montague street, Brooklyn, N. Y.
C. D. Meneely	Sec. and treas.	168 Montague street, Brooklyn, N. Y.

Directors of the Company.

Name.	Residence.
W. F. Sheehan	New York city.
Nicholas F. Brady	Albany, N. Y.
Fred S. Fowler	New York city.
John B. Taylor	Watertown, N. Y.
T. S. Williams	Brooklyn, N. Y.
C. L. Rossiter	Brooklyn, N. Y.
S. L. Keeney	Brooklyn, N. Y.
Wm. C. Bryant	Brooklyn, N. Y.
A. N. Brady	Albany, N. Y.
John Englis	Brooklyn, N. Y.
John D. Kieley	Brooklyn, N. Y.
Henry Seibert	Brooklyn, N. Y.
J. G. Jenkins	Brooklyn, N. Y.

589 Title of company, Brooklyn Union Elevated Railroad Company.

General offices at 168 Montague street, Brooklyn, N. Y.

Date of close of fiscal year, June 30.

Date of stockholders' annual meeting, first Wednesday in April.

For information concerning this report, address T. S. Williams, secretary and treasurer.

DEFENDANT'S EXHIBIT No. 31.

Prospect Park and Coney Island Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1899.

1899.

Gross earnings from operation	$7,122 95
Operating expenses (excluding all taxes)	18,025 48
Net deficit from operation	10,902 53
Income from other sources than operation	.....
Gross deficit from all sources	10,902 53

Deductions from income, as follows:		
Interest on funded debt	$8,865 00	
Taxes—		
On property used in operation of road	2,400 00	
On earnings and capital stock	.....	
Other than above	.....	
Rentals	1,928 14	
Interest and discount	5,849 00	
		19,042 14
Net deficit from all sources		29,944 67
Net deficit, as previously reported, for preceding quarters in this fiscal year		20,743 06

Operating cost, 253.06 per cent. of earnings (excluding all taxes).

590 Operating cost, 286.63 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

DEFENDANT'S EXHIBIT No. 32.

Prospect Park and Coney Island Railroad Company.

Statement to the State Board of Railroad Commissioners of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending June 30, 1899.

1899.

Gross earnings from operation		$30,464 26
Operating expenses (excluding all taxes)		29,306 63
Net earnings from operation		1,157 63
Income from other sources than operation		.....
Gross income from all sources		1,157 63
Deductions from income, as follows:		
Interest on funded debt	$9,609 15	
Taxes—		
On property used in operation of road	2,400 00	
On earnings and capital stock	.....	
Other than above	.....	
Rentals	1,928 16	
Interest and discount	6,353 92	
		20,291 23
Net deficit from all sources		19,133 60
Net deficit, as previously reported, for preceding quarters in this fiscal year		50,687 73

Operating cost, 96.20 per cent. of earnings (excluding all taxes).
Operating cost, 104.07 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

591 Form A.

DEFENDANT'S EXHIBIT No. 33.

Report of the Brooklyn Heights Railroad Company to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1900.

OFFICE OF THE
STATE BOARD OF TAX COMMISSIONERS,
ALBANY, *October 1st*, 1900.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899.

☞ It is requested that you complete and forward such report as required by that act on or before December 1st, 1900.

Very respectfully,

STATE BOARD OF TAX COMMISSIONERS.

Extract from law relating to taxation of special franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water,
592 all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all

franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible prop-
593 erty so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

Form A–5.

Tax district, Brooklyn.

NOTE.—Use one of these forms for each tax district.

Surface street railroads—Animal power, cable conduit, conduit electric, electric overhead, other powers.

Report of the Brooklyn Heights Railroad Company of Tangible Real Property Located in, upon, under, or above Streets, Highways, and Public Places.

☞ Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office on or before December 1st, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

	Miles erected prior to June 30, 1900.					Poles.			Miles erected June 30 to Nov. 1, 1900.			
	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.	Age.	Average number per mile.	Height.	General description.	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.
Bracket cons ... } Wooden poles..... }	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bracket cons..... } Wooden poles..... }	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Span wire cons.... } Wooden poles..... }	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Span wire cons.... } Iron poles ..... }	.086	.....	Single...	1—0	4 yrs.	85	24′	Tubular iron	.....	.....	.....	.....

Value reproduced (new)..... $189 20
Present value (allowing depreciation)..... 136 22

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Motive power.	Laid prior to June 30, 1900. Miles measured as single track.	Rails. Section.	Rails. Weight per yard.	Rails. When laid.	Ties. Number per mile.	Ties. Kind and size.	Kind of paving and ballast.	Laid June 30 to Nov. 1, 1900. Miles measured as single track.	Rails. Section.	Rails. Weight per yard.	Ties. Number per mile.	Ties. Kind and size.	Kind of paving and ballast.
Cable conduit....	0.733	9" girder. Groove.	98½	1898	1056	C. I. yokes.....	Granite..... Concrete conduits.		.....	.....	.....	.....	....
Electric overhead.	0.086	Stringer.	45	...	1350	Y. P..... 6" x 8" x 7' 0"	Cobble..... Sound foundation.		..	.....	.....	.....	...

Give description, dimensions and age of all bridges, culverts and trestles.

Value reproduced (new).... .... $23,621 50
Present value (allowing depreciation).. 21,890 00

STATE OF NEW YORK, County of Kings, } ss.:

T. S. Williams, vice-president of the Brooklyn Heights Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof, as to all the matters herein set forth, to the best of my knowledge and belief.

(Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

(Signed) V. W. WICKES, *Notary Public.*

596 SCHEDULE A.

Title of company, Brooklyn Heights Railroad Company.
General offices at 168 Montague street, Brooklyn, N. Y.
Date of close of fiscal year, June 30.
For information concerning this report address T. S. Williams, vice-president.

Officers of the Company, with Address.

President, C. L. Rossiter.
Vice-president, T. S. Williams.
Secretary, C. D. Meneely.
Treasurer, C. D. Meneely.
General manager, J. C. Brackenridge.

SCHEDULE B.

Description of Special Franchise, Showing Streets, Highways, or Public Places Possessed or Rights Enjoyed and in What Village, Tax District or Districts Same is Located.

NOTE.—*If this information was given in* 1899 *report and map filed, state such fact, giving only additional grant since June* 30, 1899:
This information was given in 1899 report of the Brooklyn Heights Railroad Company.

.....

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.....

This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

597

SCHEDULE D.

Statement of Assets and Liabilities June 30, 1900.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate and improvements	$462,497 50	Capital stock	$200,000 00
Cost of equipment		Funded debt	250,000 00
Stock and bonds of other companies.		Accounts and bills payable.	647,177 27
Material and supplies	516,606 88	Interest on funded debt due and accrued.	3,125 00
Accounts and bills receivable.	301,467 37	Rentals due and accrued	836,319 51
Cash on hand	18,379 50	Dividends unpaid	
Additions and betterments on leased lines.	6,266,974 54	Taxes due and accrued	535,033 89
Prepaid insurance	34,260 51	Brooklyn rapid transit, equity in const'n advances on leased lines.	5,100,655 63
		Real estate mortgages	27,875 00
Profit and loss		Profit and loss	
Total	$7,600,186 30	Total	$7,600,186 30

SCHEDULE E.

Capital Stock.

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	When payable.	Highest.	Lowest.	Present.
Common issued	2,000	$200,000 00		None.			
Preferred issued							
Total	2,000	$200,000 00					

SCHEDULE F.

Funded Debt.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
First mortgage	Ap'l 1, 1891	Oct. 1, 1941	$250,000 00	5	Ap'l and Oct.			

599 *Statement of Receipts and Disbursements for Year Ending June 30, 1900.*

SCHEDULE G.

Receipts.	Amount.
From actual operation	$11,268,021 85
Interest	3,527 94
Rentals	167,253 99
Advertising	108,782 40
Other sources	40,923 94
Sales of stock	.....
Sales of bonds	.....
Bills payable	400,000 00
From Brooklyn Rapid Transit and lessor companies on account of construction and equipment on leased lines	1,135,726 72
Deficit—Balance due from Brooklyn Rapid Transit and lessor companies for construction expenditures on leased lines	1,252,916 91
Total	$14,377,153 75

Disbursements.	
Salaries of general officers	$51,966 57
Salaries of clerks and office expenses	127,097 04
Law expenses	115,502 53
Maintenance	1,321,072 37
Reconstruction	.....
Other operating expenses	5,432,854 87
New construction (extension) and equipment on leased lines	2,388,643 63
Rentals	3,551,066 44
Interest paid	16,504 74
Taxes on real estate in this State	
Taxes on personal estate in this State	
Taxes on property in other States	
Payments covered by sec. 46, tax law. Percentage on gross earnings paid municipality	696,720 80
Payments covered by sec. 46, tax law. Other items	
Dividends paid — per cent. common stock	....
Dividends paid — per cent. preferred stock	.....
Loans	400,000 00
Amounts paid for new street paving	.....
Surplus from operation	275,724 76
Total	$14,377,153 75

Statement of Cost to Reproduce (New) Property in Streets, Highways, etc., Value Less Depreciation and Same Outside, with Assessments in Each Tax District.

* Name of each township and city wherein located and wards in city where different tax rates prevail.	Present value of property in streets, highways and public places on basis of cost of reproduction. (New.)	Present value of property in streets, highways and public places. (Allowing depreciation.)	Present value of property outside streets, highways and public places on basis of cost of reproduction. (New.)	Present value of property outside streets, highways and public places. (Allowing depreciation.)	Assessment of real estate in streets, highways, etc., in 1900.	Assessment of real estate outside streets, highways, etc., in 1900.	Remarks.
Borough of Brooklyn	$23,810 70	$22,026 22			$78,311 00	$54,760 00	
Borough of Queens						200 00	
Total	$23,810 70	$22,026 22			$78,311 00	$54,960 00	

* Name of each tax district in which assessments are made for real estate.

601 *Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock, and All Other Non-taxable Securities Owned.*

SCHEDULE I.

Description.	Amount.
.....	.....
None.....	.....
.....	.....
Total.....	.....
.....	.....
Value of tangible personal property, material, supplies, cars, etc.....	.....
Total assessment of personal property.....	None.
Is there any contest on 1900 personal assessment?.....	.....
.....	.....
.....	.....

SCHEDULE H.

Statement in Detail of Rentals Paid.

Name of lessor.	Annual rental paid by lessee.	Portion used for payment of interest on debt of lessor.	Portion used for payment of dividends on capital stock of lessor.
Brooklyn City.....	$1,555,666 41	$348,500 00	$1,200,000 00
Nassau Electric.....	806,775 81	625,525 81	.....
Brooklyn, Queens Co. and Suburban.	328,699 99	328,699 99	.....
Sea Beach.....	26,150 00	26,150 00	.....
Brooklyn Union Elevated.....	793,774 23	693,774 23	.....
Prospect Park and Coney Island....	40,000 00	.....	.....
Total amount of annual rental.	$3,551,066 44	$2,022,650 03	$1,200,000 00

602 SCHEDULE M.

Details of Roads Owned and Leased.

Name of road.	From	To	Miles owned.	Miles leased.
Brooklyn Heights R. R			1.266	
Brooklyn City R. R.				205.650
Brooklyn, Queens Co. and Suburban R. R.				47.22
Nassau Electric R. R				129.70
Sea Beach railway				13.85
Coney Island and Gravesend railway				6.43
Prospect Park and Coney Island R. R				25.07
Brooklyn Union Elevated R. R., surface lines				19.91
Brooklyn Union Elevated R. R., elevated lines				67.824
New York and Brooklyn Bridge R. R.				3.60
Coney Island and Brooklyn R. R. trackage rights				2.37
Total mileage			1.266	521.624

This schedule is applicable only to railroad corporations.

The accompanying blanks are an integral part of this report. A separate blank should be used for *each tax district* (*for each ward in a city where the ward rates differ*). Additional copies will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not contain the proper blanks for the different fields of construction needed to make a satisfactory report other blanks will be furnished on request, covering surface street
603 railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK, }
County of Kings, } ss.:

T. S. Williams, vice-president of the Brooklyn Heights R. R. Co., being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company,

and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof at the close of the year ending June 30, 1900, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

[L. S.] (Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

V. W. WICKES,
Notary Public, Kings County, N. Y.

JANUARY 9, 1901.

Hon. Peter Deyo, secretary State Board of Tax Commissioners, Albany, N. Y.

DEAR SIR: Answering your letter of the 21st ult. requesting additional information to that furnished in the report of the Brooklyn Heights Railroad Company of November 28, 1900, to the
604 State Board of Tax Commissioners, I would reply as follows:

1. *As to Schedules E and F:*

All the stock of the Brooklyn Heights Railroad Company except the shares qualifying directors is owned by the Brooklyn Rapid Transit Company, and has no market value. No dividends are paid on said stock. The bonds of the Brooklyn Heights Railroad Company are quoted during the year ending June 30, 1900, in the "Commercial and Financial Chronicle" of New York at 102 for the lowest price and 105 for the highest price.

2. *As to Schedule G:*

The item of $2,388,643.63 is divided between new construction and equipment as follows:

New construction	$862,765 97
Equipment	1,525,877 66
Total	$2,388,643 63

The division of new construction and equipment among the various lessor companies is as follows:

Brooklyn City R. R. Co.	$278,056 21
Nassau Electric R. R. Co.	92,050 09
Brooklyn Union Elevated R. R. Co.	667,110 53
Brooklyn, Queens Co. and Suburban R. R. Co.	13,949 13
Prospect Park and Coney Island R. R.	82,402 33
Undistributed	1,255,075 31
Total	$2,388,643 63

3. *As to Schedule K:*

The company's property outside of streets, highways and public places consists of tracks running through private right-of-way on Montague street from Montague terrace to Wall Street ferry, the assessed valuation of which is $20,500 for the year 1900; real
605 estate in the borough of Brooklyn, consisting of power-house at No. 40 State street, and various vacant lots, all of which are assessed at $34,260, and a vacant lot in the borough of Queens, the assessed valuation of which is $200; making a total of $54,960.

4. In form A–5 we did not include the value of the part tunnel on Montague street, inasmuch as this tunnel is located on private right-of-way not owned but rented by this company.

5. As to value of personal property called for in Schedule L:

This is generally included in the statement of assets given in Schedule D, and a large part of which represents equipment purchased for *lessor companies*. The approximate value of the tangible personal property *owned* by the Brooklyn Heights Railroad Company alone is as follows:

Supplies	$516,606 88
Cash	18,379 50
Cars	5,150 00
Horses	9,000 00
Trucks, tools and miscellaneous equipment	3,250 00
Total	$552,386 38

We should be pleased to furnish any additional information desired.

Yours respectfully,

THE BROOKLYN HEIGHTS RAILROAD COMPANY,
By T. S. WILLIAMS, *Vice-President.*

606 Brooklyn Heights Railroad Company.

Amount Expended for Additions and Betterments on Leased Lines During Year Ending June 30, 1900.

Track and roadway and overhead construction.

Brooklyn City		$179,957 91
Nassau	$75,742 70	
"	21,560 50	
		97,303 20
Brooklyn Union Elevated		260,283 82
Kings County	$19,507 99	
"	268 95	
		19,776 94

Brooklyn, Queens Co. and Suburban	18,119 47	
Prospect Park and Coney Island	82,402 33	
Sea View	17,446 26	
Nassau Heights	7,711 16	
		$683,001 09

Right of way.

Nassau	$1,152 97	
Brooklyn Union Elevated	2,616 47	
		3,769 44

Buildings and fixtures.

Brooklyn City	$124,197 85	
Nassau	17,794 38	
Brooklyn Union Elevated	35,675 00	
Kings County	4,806 66	
Sea View	56,324 48	
		238,798 37

Power station equipment and storage batteries.

Brooklyn City	$15,403 81	
Nassau	282 10	
Brooklyn Union Elevated	80,807 28	
		96,493 19

Car equipment.

Brooklyn City	$1,70- 11	
Nassau	597,297 55	
Brooklyn Union Elevated	172,992 37	
Kings County Elevated	13,044 69	
Sea View	1,900 73	
New equipment	747,566 94	
		1,534,510 39

Tools and machinery.

Brooklyn City	$7,323 81	
Brooklyn Union Elevated	1,435 83	
		8,759 64

607 Miscellaneous equipment.

Nassau	4,375 00
	$2,569,707 12

Credits.

Brooklyn City..... A	$50,535 25	
Nassau Electric..... B	126,155 11	
Sea Beach..... C	202 79	
Brooklyn, Queens Co. and Suburban..... D	4,170 34	
		181,063 49
		$2,388,643 63

	Equipment.	Construction.
A.....	$22,100 50	$28,434 75
B.....	93,952 27	32,202 84
C.....	202 79	.....
D.....	2,005 00	2,165 34
	$118,260 56	$62,802 93
		$181,063 49

Brooklyn Heights Railroad Company.

Statement of Additions and Betterments, "Leased Lines."

Balance unpaid June 30, 1899.....		$4,928,284 24
Expended during year ending June 30, 1900:		
Brooklyn City.....		$278,056 24
Nassau.....	$96,928 47	
Less reconst'n 39th St. power-house inc. report, 1899.....	4,878 38	
		92,050 09
Brooklyn Union Elevated.....		553,810 77
Kings County Elevated..	$37,359 34	
Add balance, June 30, 1899.....	268 95	
		37,628 29
B'klyn, Queens County and Suburban..		13,949 13
Pospect P'k and Coney Island.....		82,402 33
Sea View.....	$172,969 02	
Less transferred to Nassau	97,297 55	
		75,671 47

608	Nassau Heights		7,711 16	
	New closed cars	$734,676 08		
	New open cars	274,226 05		
	New motor equipment	137,023 39		
	New truck equipment	30,208 42		
	New controllers	71,433 00		
			1,247,566 94	
			2,388,846 42	
	Sea Beach—credit		202 79	
				2,388,643 63
				$7,316,927 87

Payments by lessors.

Brooklyn City		$24,000 00	
Brooklyn Union Elevated		360,000 00	
Kings County Elevated		37,628 29	
Prospect Park and Coney I		108,426 96	
Sea Beach		30,000 00	
Sea View	$172,969 02		
Less am't rec'd from B. R. T., for account Nassau Co	97,297 55		
		75,671 47	
Nassau Co		500,000 00	
			1,135,726 72
			$6,181,201 15

Ledger balance, June 30, 1900.

N. Y. and B. B. construction	$191,549 68		
Brooklyn City construction	4,826,555 42		
		$5,018,105 10	
Nassau construction		70,489 59	
B'klyn Union El. construction		218,165 95	
B'klyn, Q. Co. and Su'ban construction		43,030 29	
P. P. and Coney Island construction		38,571 34	
Sea Beach		3,850 60	
Nassau Heights		41,421 34	
Equipment		747,566 94	
			$6,181,201 15

609 DEFENDANT'S EXHIBIT No. 34.

Report of the Brooklyn City Railroad Company to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1900.

OFFICE OF THE
STATE BOARD OF TAX COMMISSIONERS,
ALBANY, *October* 1*st*, 1900.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899.

☞ It is requested that you complete and forward such report as required by that act on or before December 1st, 1900.

Very respectfully,
STATE BOARD OF TAX COMMISSIONERS.

Extract from law relating to taxation of special franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph
610 lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals,

quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the
611 special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

Form A–5.

Tax district, Queens.

NOTE.—Use one of these forms for each tax district.

Surface street railroads—Animal power, cable conduit, conduit electric, electric overhead, other powers.

Report of the Brooklyn City Railroad Co. of Tangible Real Property Located in, upon, under, or above Streets, Highways, and Public Places.

☞Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office on or before December 1st, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Electric Railway Conductors.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid or erected prior to June 30, 1900.									Laid or erected June 30 to Nov. 1, 1900.						
Conductors not in subway, exclusive of trolley wire.	Insulated conductors in subway.			Use these columns for overhead and underground conductors.		Third rail system.			Conductors not in subway, exclusive of trolley wires.	Use this column for overhead and underground conductors.	Insulated conductors in subway.			Third rail system.	
Miles.	Miles.	Character of insulation.	Pressure.	Size.	Age.	Miles.	Weight per yard.	Age.	Miles.	Size.	Miles.	Character of insulation.	Pressure.	Miles.	Weight per yard.
33.65	.....	.....	.....	500000	6 years.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
3.	.....	.....	.....	0000	6 years.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Value reproduced new $73,550 93
Present value (allowing depreciation) 58,840 75

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

	Miles erected prior to June 30, 1900.					Poles.			Miles erected June 30 to Nov. 1, 1900.			
	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.	Age.	Average number per mile.	Height.	General description.	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.
Bracket cons... Wooden poles..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bracket cons... Iron poles.....	.....	.190	Double..	1—0	4 yrs.	55	24	Tubular iron.....	.....	.....	.....	.....
Span wire cons. Wooden poles..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Span wire cons. Iron poles.....	.....	18.38	Double..	1—0	4 yrs.	85	24	Tubular iron.....	.....	.....	.....	.....
Span wire cons. Iron poles.....	.....	.285	Double..	2—0	4 yrs.	85	24	Tubular iron.....	.....	.....	.....	.....

Value reproduced (new)..... $45,256 75
Present value (allowing depreciation)..... 32,601 58

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid prior to June 30, 1900.								Laid June 30 to Nov. 1, 1900.					
Motive power.	Miles measured as single track.	Rails. Section.	Rails. Weight per yard.	Rails. When laid.	Ties. Number per mile.	Ties. Kind and size.	Kind of paving and ballast.	Miles measured as single track.	Rails. Section.	Rails. Weight per yard.	Ties. Number per mile.	Ties. Kind and size.	Kind of paving and ballast.
Electric overhead	23.64	9" girder	94 lbs.		2112	Y. P. 6" x 8" x 7' 0"		*1.14	9" girder	94 lbs.	2112	Y. P. 6" x 8" x 7' 0"	Fire brick.
"	8.45	Lewis & Fowler.	Sec. M.		2112	Y. P. 6" x 8" x 7' 0"							
"	2.11	Flat	45 lbs.		1350	Y. P. 6" x 8" x 7' 0"							
"	3.51	T	50 lbs.		2650	Y. P. 6" x 8" x 7' 0"							

Give description, dimensions and age of all bridges, culverts and trestles.

Value reproduced (new)..... $366,594 68
Present value (allowing depreciation).. 216,230 87

* This was laid in reconstruction and replaces the same amount of Lewis & Fowler whose above milage is reduced from 8.45 to 7.31.

615 STATE OF NEW YORK, } ss:
County of Kings, }

T. S. Williams, vice-pres. of the Brooklyn Heights R. R. Co., lessee of the Brooklyn City R. R. Co., being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

(Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

V. W. WICKES,
Notary Public.

Form A–5.

Tax district, Brooklyn.

NOTE.—Use one of these forms for each tax district.

Surface street railroads—Animal power, cable conduit, conduit electric, electric overhead, other powers.

Report of the Brooklyn City Railroad Company of Tangible Real Property Located in, upon, under, or above Streets, Highways, and Public Places.

☞ Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office on or before December 1, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid or erected prior to June 30, 1900.									Laid or erected June 30 to Nov. 1, 1900.						
Conductors not in subway, exclusive of trolley wire.	Insulated conductors in subway.			Use these columns for overhead and underground conductors.		Third rail system.			Conductors not in subway, exclusive of trolley wire.	Use this column for overhead and underground conductors.	Insulated conductors in subway.			Third rail system.	
Miles.	Miles.	Character of insulation.	Pressure	Size.	Age.	Miles.	Weight per yard.	Age.	Miles.	Size.	Miles.	Character of insulation.	Pressure.	Miles.	Weight per yard.
.....	7.01	Lead covered paper insulated.	550	c. m. 1000000	1 yr.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	1.96	"	"	500000	1 yr.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
30	.....	Weather proof.	.....	0000	6 "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
270.76	.....	"	.....	500000	6 "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Value reproduced (new) $625,434 73
Present value (allowing depreciation) 520,973 04

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

	Miles erected prior to June 30, 1900.					Poles.			Miles erected June 30 to Nov. 1, 1900.			
	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.	Age.	Average number per mile.	Height.	General description.	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.
Bracket cons. .... Iron poles	.....	.265	Double ..	1-0	4 yrs.	55	24′	Tubular iron.	.....	.....	.....	.....
Span wire cons.... Iron poles.....	.259	.....	Single ...	1-0	4 yrs.	85	24′	Tubular iron.	.285	.....	Double ..	1-0
Span wire cons.... Iron poles	.....	59.973	Double ..	1-0	4 yrs.	85	24′	....	.....	.....	....	.....
Span wire cons ... Iron poles.....	.....	19.975	Double ..	2-0	4 yrs.	85	24′	Tubular iron.	.....	.....	.....	.....

Value reproduced (new)..... $190,467 50
Present value (allowing depreciation) 135,987 42

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid prior to June 30, 1900.							Laid June 30 to Nov. 1, 1900.				
Description of subway.			Kind of paving and ballast.	Manholes.		Age.	Description of subway.			Number of manholes.	Kind of paving and ballast.
Number of ducts.	Length (in feet) of subway.	Type of ducts.		Number.	Size.		Number of ducts.	Length (in feet) of subway.	Type of ducts.		
32	1409.05	McRoy vitrified clay	Granite, cobble, concrete	6	7′ 4″ long, 6′ wide, 7′ 3″ deep	1 yr.					
24	318.25	"	"	2	"	"					
20	1846.	"	"	7	"	"					
56	31.9	"	"	1	"	"					

Value reproduced (new) $14,151 19
Present value (allowing depreciation) 14,151 19

Report only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid prior to June 30, 1900.								Laid June 30 to Nov. 1, 1900.					
Motive power.	Miles measured as single track.	Rails. Section.	Rails. Weight per yard.	Rails. When laid.	Ties. Number per mile.	Ties. Kind and size.	Kind of paving and ballast.	Miles measured as single track.	Rails. Section.	Rails. Weight per yard.	Ties. Number per mile.	Ties. Kind and size.	Kind of paving and ballast.
Electric overhead	151.50	9" girder	*Lbs.* 90 / 94 / 98		2112	6" x 8" x 7' 0"	Asphalt / Granite / Belgian / Brick / Cobble — Y. P.	*1.41	9" g'd'r	94 lbs.	2112	6' x 8" x 7' 9" Y. P.	Granite.
"	0.71	6" "	70 lbs.		do.	do.	Granite						
"	2.83	Lewis & Fowler	Sec. M		do.	do.	Belgian / Cobble						
"	6.99	Flat	45 lbs.		1350	do.	Granite / Cobble						
"	1.27	T	60 lbs.		2650	do.	Macadam						

*This was laid in reconstruction and replaces the same amount of flat rail, which reduces the 6.99 miles of flat rail to 5.58 miles, the total mileage remaining unchanged.

Give description, dimensions and age of all bridges, culverts, and trestles.

Value reproduced (new)	$1,733,658 32
Present value (allowing depreciation)	1,056,592 36

620 STATE OF NEW YORK, }
County of Kings, } ss:

T. S. Williams, vice-pres. of the Brooklyn Heights R. R. Co., lessee of the Brooklyn City R. R. Co., being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

(Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

V. W WICKES,
Notary Public.

SCHEDULE A.

Title of company, the Brooklyn City Railroad Company.
General offices at 168 Montague street, Brooklyn.
Date of close of fiscal year, June 30.
For information concerning this report address T. S. Williams, vice-president of Brooklyn Heights R. R. Co., lessee.

Officers of the Company, with Address.

President, Edward Merritt.
Secretary, Thomas P. Swin.
Treasurer, Thomas P. Swin.

621 SCHEDULE B.

Description of Special Franchise Showing Streets, Highways, or Public Places Possessed or Rights Enjoyed and in what Village, Tax District or Districts Same is Located.

NOTE.—*If this information was given in* 1899 *report and map filed, state such fact, giving only additional grants since June* 30, 1899.

This information was given in 1899 report of Brooklyn Heights Railroad Company, lessee.

....
....
....
....

This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

SCHEDULE D.

Statement of Assets and Liabilities June 30, 1900.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate and improvements; cost of equipment.	$18,955,000 00	Capital stock	$12,000,000 00
Stock and bonds of other companies.	209,893 75	Funded debt	6,925,000 00
Material and supplies		Accounts and bills payable.	36,134 78
Accounts and bills receivable.	101,233 05	Interest on funded debt due and accrued.	
Cash on hand	38,405 16	Rentals due and accrued.	
Real estate bond and mortgage.	11,000 00	Dividends unpaid	
Profit and loss		Profit and loss	354,397 18
Total	$19,315,531 96	Total	$19,315,531 96

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	When payable.	Highest.	Lowest.	Present.
Common issued	1,200,000	$12,000,000 00	10 per cent.	Quarterly			
Preferred issued				Jan. 15 Apr. 15 July 15 Oct. 15			
Total	1,200,000	$12,000,000 00					

FUNDED DEBT—SCHEDULE F.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
B. C. R. R. first cons. mortgage	July 1, 1891	July 1, 1941	$6,000,000	5 per cent.	J—J			
First mortgage on B'klyn Crosstown R. R.	June 27, 1888	July 1, 1908	200,000	5 per cent.	J—J			
Calv. Cem. G'p't and B'klyn R. R.	June 1, 1887	Jan'y 1, 1907	200,000	6 per cent.	J—D			
New Williamsburgh and F. R. R.	Feb'y 1, 1897	July 1, 1941	200,000	4½ per ct.	F—A			
Greenpoint and Lorimer St. R. R.	May 1, 1885	May 1, 1910	125,000	6 per cent.	M—N			
Grand St. and Newtown R. R.	July 1, 1886	July 1, 1906	200,000	5 per cent.	F—A			

623 *Statement of Receipts and Disbursements for Year Ending June 30, 1900.*

SCHEDULE G.

Receipts.

See report of Brooklyn Heights Railroad Company, lessee.

Disbursements.

See report of Brooklyn Heights railroad, lessee.

Statement of Cost to Reproduce (New) Property in Streets, Highways, etc., Value Less Depreciation and Same Outside, with Assessments in Each Tax District.

* Name of each township and city wherein located and wards in city where different tax rates prevail.	Present value of property in streets, highways and public places on basis of cost of reproduction. (New.)	Present value of property in streets, highways and public places. (Allowing depreciation.)	Present value of property outside streets, highways and public places on basis of cost of reproduction. (New.)	Present value of property outside streets, highways and public places. (Allowing depreciation.)	Assessment of real estate in streets, highways, etc., in 1900.	Assessment of real estate outside streets, highways, etc., in 1900.	Remarks.
Borough of Queens	$485,402 36	$307,733 20				$173,700 00	
Borough of Brooklyn	2,563,711 74	1,727,684 01			$9,487,629 00	2,396,530 00	
Borough of Manhattan						14,000 00	
Total	$3,049,114 10	$2,035,417 21			$9,487,629 00	$2,584,230 00	

* Name of each tax district in which assessments are made for real estate.

625 *Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock and All Other Non-taxable Securities Owned.*

SCHEDULE L.

Description.	Amount.
.....	.....
None	.....
.....	.....
Total	.....
.....	.....
Value of tangible property, material, supplies, cars, etc. See report of B. H. R. R. Co., lessee.....	.....
Total assessment of personal property.....None	.....
Is there any contest on 1900 personal assessment.....	.....
.....	.....

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.
Brooklyn Heights Railroad Company	$1,555,666 41
.....	.....
.....	.....
.....	.....

SCHEDULE M.

Details of Roads Owned and Leased.

This company is leased to Brooklyn Heights Railroad Company for 999 years, from February 14, 1893.

626 The accompanying blanks are an integral part of this report. A separate blank should be used for *each tax district* (*for each ward in a city where the ward rates differ*). Additional copies

will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not contain the proper blanks for the different fields of construction needed to make a satisfactory report, other blanks will be furnished on request, covering surface street railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK, }
County of Kings, } ss:

T. S. Williams, vice-president of the Brooklyn Heights Railroad Company, lessee of the Brooklyn City Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, except as to Schedules D, E and F, which have been taken from the books of the lessor company, and after careful examination of the same, declares them to be a true, full and correct statement of the
627 property of said company and the value thereof at the close of the year ending June 30, 1900, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

[L. S.] (Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

V. W. WICKES,
Notary Public, Kings County, N. Y.

JANUARY 9, 1901.

Hon. Peter Doyo, secretary State Board of Tax Commissioners, Albany, N. Y.

DEAR SIR: Answering your letter of the 21st ultimo to the Brooklyn City Railroad Company, requesting additional information to that furnished in the report of said company to the State Board of Tax Commissioners on November 28, 1900, I would reply as follows:

1. *As to Schedules E and F.*

The market price of the stock of the Brooklyn City Railroad Company ranged during the year ending June 30, 1900, between $228 and $238 per share. The market value of its various securities is set forth in the "Commercial and Financial Chronicle of New York," as follows:

	Highest.	Lowest.
Brooklyn City Railroad Company, consol	116¼	115½
Brooklyn Crosstown railroad	107	104
Calvary Cemetery, Greenpoint and Brooklyn railroad	111	110
Grand Street and Newtown railroad	105	104
Greenpoint and Lorimer Street railroad	108	108
New Williamsburgh and Flatbush railroad	107	105

628 2. *As to Schedule K.*

Much of the property of the company outside streets, highways and public places was acquired through the acquisition of other railroad companies which were subsequently merged with the Brooklyn City Railroad Company. The books of those constituent companies were in most cases not turned over at the time of merger, and no record exists on the books of the Brooklyn City Railroad Company of the cost of the several parcels of real estate composing part of the property turned over. The assessed value of such property, however, is set forth on page 11 of the report as $2,584,230. This is made up as follows:

Tracks and private right of way, borough of Brooklyn	$11,000
Tracks and private right of way, borough of Manhattan	14,000
Tracks and private right of way, borough of Queens	42,000
Parcels of real estate, borough of Brooklyn	2,385,530
Parcels of real estate, borough of Queens	131,700
Total	$2,584,230

Of the above, valuations representing $657,000 are in litigation.

3. *As to Schedule L:*

The book value of the tangible personal property is included in the figures presented in Schedule D of the report. All this tangible personal property was turned over to the Brooklyn Heights Railroad Company as lessee for 999 years on June 6, 1893, and under the terms of the lease the lessee company is obliged to maintain the same in a reasonable state of efficiency, and to return it or its equivalent at the termination of the lease. Changes in said equipment are made from time to time by the lessee company, and the lessor company has no record of the present condition or value of said tangible personal property.

629 If any additional information is desired we shall be pleased to furnish it.

Yours respectfully,

THE BROOKLYN CITY RAILROAD COMPANY,
THE BROOKLYN HEIGHTS RAILROAD COMPANY, *Lessee*,
By T. S. WILLIAMS, *Vice-President*.

DEFENDANT'S EXHIBIT 35.

Report of the Brooklyn Union Elevated Railroad Co. to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1900.

OFFICE OF THE STATE BOARD OF TAX COMMISSIONERS,
ALBANY, *October* 1, 1900.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899.

☞ It is requested that you complete and forward such report as required by that act on or before December 1, 1900.

Very respectfully,
STATE BOARD OF TAX COMMISSIONERS.

630 Extract from law relating to taxation of special franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of trans-

portation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State.

631 A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

Form A–6.

Tax district, Brooklyn.

NOTE.—Use one of these forms for each tax district.

Elevated railroads.

Report of the Brooklyn Union Elevated Railroad Company, Including Former Kings County El. R. R. Co., Sea View Railroad Co., and Brooklyn and Brighton Beach R. R. Co., of Tangible Real Property Located in, upon, under, or above Streets, Highways, and Public Places.

☞ Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and report to this office on or before December 1st, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Constructed prior to June 30, 1900.

	Character of structure.	Miles.	Age.	Rails.		Number of stations.		Electrical equipment.					
								Conductor rail.		Feeder cables.			
				Weight per yard.	When laid.	Single.	Double.	Number of feet.	Weight per yard.	Number of feet.	Size.	Insulation.	Age.
Single track										35,216	1,000,000	Weatherproof	2¼ yrs.
Double track	Plate girder / Lattice "	23,840	7 to 16 yrs	70 lbs. / 70 lbs. / 80 lbs. / 85 lbs.	1884 to 1900	50	41	191,408	56 lbs. to 70 lbs.	35,534	500,000	"	6 mos.
Three track	"	4,624	"	"	"					2,384	1,000,000	"	6 "
Four track										28,539	500,000	"	6 yrs.
Double surface track		.09			1899								

Constructed June 30th to November 1st, 1900.

Single track										17,066	500,000	Weatherproof	4 mos.
Double track								28,292	56 lbs. to 70 lbs.	100	1,000,000	"	"

Present value, reproduced (new) $5,695,252 01
Present value, allowing depreciation 4,885,595 12

633 STATE OF NEW YORK, } ss.:
County of Kings, }

T. S. Williams, vice-president of the Brooklyn Union Elevated Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof, as to all the matters herein set forth, to the best of my knowledge and belief.

(Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

V. W. WICKES,
Notary Public.

SCHEDULE A.

Title of company, Brooklyn Union Elevated Railroad Co.
General offices at 168 Montague street, Brooklyn.
Date of close of fiscal year, June 30.
For information concerning this report address T. S. Williams, vice-president.

Officers of the Company, with Address.

President, C. L. Rossiter.
Vice-president, T. S. Williams.
Secretary, C. D. Meneely.
Treasurer, C. D. Meneely.

634 SCHEDULE B.

Description of Special Franchise, Showing Streets, Highways, or Public Places Possessed or Rights Enjoyed and in What Village, Tax District or Districts Same is Located.

NOTE.—*If this information was given in* 1899 *report and map filed, state such fact, giving only additional grants since June* 30, 1899.

This company now includes the Sea View Railroad Co. and the Kings County Elevated R. R. Co., the Sea View R. R. Co. having been merged with the Kings County Elevated R. R. Co. on May 9, 1900, and the Kings County Elevated Railroad Co. having been merged with the Brooklyn Union Elevated R. R. Co. on May 24, 1900.

The information called for in these schedules was contained in the report of the Brooklyn Heights Railroad Co., lessee, for 1899.

This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

SCHEDULE D.

Statement of Assets and Liabilities, June 30, 1900.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate and improvem'ts	$39,879,097 00	Capital stock	$18,000,000 00
Cost of equipment		Funded debt	23,000,000 00
Stock and bonds of other companies		Accounts and bills payable	218,739 21
Material and supplies		Int. on funded debt due and accr'd	
Accounts and bills receivable	156,315 80	Rentals due and accrued	
Cash on hand	629 97	Dividends unpaid	
Construction contract	1,500,000 00	Taxes due and accrued	31,925 81
		Receiver, B. E. R. R. Co.	132,062 43
Profit and loss		Profit and loss	153,315 32
Total	$41,536,042 77	Total	$41,536,042 77

CAPITAL STOCK—SCHEDULE E.

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	When payable.	Highest.	Lowest.	Present.
Common issued	130,000	$13,000,000 00	None.				
Preferred issued	50,000	5,000,000 00	None.				
Total	180,000	$18,000,000 00					

FUNDED DEBT—SCHEDULE F.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
1st mtge., Brooklyn Union	Feb. 1, 1899	Feb. 1, 1950	$16,000,000 00	4 per ct.	F—A			
1st mtge., Kings Co.	July 25, 1899	Aug. 1, 1949	7,000,000 00	4 per ct.	F—A			

636 *Statement of Receipts and Disbursements for Year Ending June 30, 1900.*

SCHEDULE G.

Receipts.

See report of B. H. R. R. Co., lessee.

Disbursements.

See report of B. H. R. R. Co., lessee.

Statement of Cost to Reproduce (New) Property in Streets, Highways, etc., Value Less Depreciation and Same Outside, with Assessments in Each Tax District.

* Name of each township and city wherein located and wards in city where different tax rates prevail.	Present value of property in streets, highways, and public places on basis of cost of reproduction (new).	Present value of property in streets, highways, and public places (allowing depreciation).	Present value of property outside streets, highways and public places on basis of cost of reproduction (new).	Present value of property outside streets, highways and public places (allowing depreciation).	Assessment of real estate in streets, highways, etc., in 1900.	Assessment of real estate outside streets, highways, etc., in 1900.	Remarks.
Borough of Brooklyn	$5,695,252 01	$4,885,595 12			$5,197,033 00	$1,246,610 00	
Total	$5,695,252 01	$4,885,595 12			$5,197,033 00	$1,246,610 00	

* Name of each tax district in which assessments are made for real estate.

638 *Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock, and All Other Non-taxable Securities Owned.*

SCHEDULE L.

Description.	Amount.
.....	.....
None	.....
.....	.....
Total.....	.....
.....	.....
Value of tangible personal property, material, supplies, cars, etc. (See report of B. H. R. R. Co., lessee).....	.....
Total assessment of personal property..... None...	.....
Is there any contest on 1900 personal assessment	.....
.....	.....
.....	.....

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.
Brooklyn Heights Railroad Company	$793,774 23
.....	.....
.....	.....
.....	.....

639 SCHEDULE M.

Details of Roads Owned and Leased.

This company leased to Brooklyn Heights Railroad Co. (see its report).

The accompanying blanks are an integral part of this report. A separate blank should be used for *each tax district* (*for each ward in a city*

where the ward rates differ). Additional copies will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not contain the proper blanks for the different fields of construction needed to make a satisfactory report other blanks will be furnished on request, covering surface street railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK, }
County of Kings, } ss.:

T. S. Williams vice president of the Brooklyn Union Elevated Railroad Company being duly sworn, deposes and says that the foregoing statements have been compiled from the books and
640 records of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof at the close of the year ending June 30, 1900, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

[L. S.] (Signed) T. S. WILLIAMS.

Subscribed and sworn to before me, this 28th day of November, 1900.

V. W. WICKES,
Notary Public, —— *County*, N. Y.

JAN. 9, 1901.

Hon. Peter Deyo, sec'y State Board of Tax Commissioners, Albany, N. Y.

DEAR SIR: Answering your letter of the 21st ult., requesting additional information to that furnished in the report of the Brooklyn Union Elevated Railroad Company to your board, dated November 28, 1900, I would reply as follows:

1. *As to Schedule E*—

Nearly all the preferred and common stock of the Brooklyn Union Elevated R. R. Co. is owned by the Brooklyn Rapid Transit Com-

pany, and I have heard of no sales of the preferred stock during the year ending June 30, 1900. I should think a fair estimated market value would be between $40 and $50 per share. As to the common stock, the only sales of which I have heard have been at $20 per share.

As to Schedule F—

The highest price of the Brooklyn Union El. R. R. Co.'s 1st mort-
gage 4 per cent. bonds during the year ending June 30, 1900,
641 according to the "Commercial and Financial Chronicle" of
New York, was 104½ and the lowest price 92. The highest price of the Kings County El. R. R. Co.'s 1st mortgage 4 per cent. bonds was 84½ and the lowest price 78.

2. As to the omission in Schedule K of the report as filed to state the value of property outside streets, highways and public places, etc., I would say that it is impossible from the books of the company to supply this information with any approximate degree of accuracy. The nearest approximation is the assessed valuation which is given in the report at $1,246,610 and which I find is an error of calculation. It should be $1,229,640. This assessed valuation is made up as follows:

Tracks and private right of way of former Brighton Beach R. R. Co.	$775,000
Tracks and private right of way of former B. U. El. R. R. Co.	35,000
Tracks and private right of way of former K. Co. El. R. R. Co.	37,000
Tracks and private right of way of former Sea View R. R. Co.	39,650
	$886,650
Parcels of real estate	342,990
	$1,229,640

The greater part of this gross amount is the assessment against the former Brighton Beach Railroad Company, covering about seven miles of a fifty-foot strip of private right of way and tracks between Fulton street and the Atlantic ocean, including terminal facilities. Where these tracks cross public highways they are taxable as special franchises, and the value thereof has been so reported to your board, but any attempt to give a definite value to the various parcels comprising the right of way would be merely a
matter of opinion, and is not reflected by the records on the
642 books of the company, the property having been sold at fore-
closure to satisfy debts and having been bought in in its entirety by bondholders. However, the approximate value of the tracks on said right of way can be given you if desired. The same criticism is true of the various parcels of real estate whose assessed

valuation is $342,990. These were mostly acquired at foreclosure sale with the tracks and franchises of the company whose mortgages were foreclosed, and no separate valuations except in a very few cases of after-acquired property appear on the books of the company.

3. As to the omission in Schedule L to give the value of tangible personal property, I would say that all this information was included in the statement of assets given in Schedule D, which is the book value thereof. If you desire a separate valuation of cars, etc., we will endeavor to furnish it.

Yours respectfully,

BROOKLYN UNION ELEVATED RAILROAD CO.,
By T. S. WILLIAMS, *Vice-President.*

643 DEFENDANTS' EXHIBIT No. 36.

Brooklyn Rapid Transit Company.

Report of the Board of Directors to the Stockholders for the Year Ending June 30, 1900.

Brooklyn Rapid Transit Company.

Report of the Board of Directors to the Stockholders for the Year Ending June 30, 1900.

Board of directors.

A. N. Brady,

August Belmont,	J. G. Jenkins,
E. H. Harriman,	D. H. Valentine,
H. H. Porter,	Henry Seibert,
R. Somers Hayes,	H. C. Du Val,
A. R. Flower,	C. L. Rossiter,
W. G. Oakman,	T. S. Williams.

Officers.

A. N. Brady	*Chairman of the board.*
C. L. Rossiter	*President.*
T. S. Williams	*Vice-president.*
H. C. Du Val	*Vice-president.*
J. C. Brackenridge	*General manager.*
C. D. Meneely	*Secretary and treasurer.*

644 Brooklyn Rapid Transit Company.

Report of Board of Directors to Stockholders for Year Ending June 30, 1900.

168 MONTAGUE STREET,
BROOKLYN, *October* 31, 1900.

The Brooklyn rapid transit system entered upon the fiscal year ending June 30, 1900, in full control of all the constituent companies which now comprise the system, with the single exception of the Kings County Elevated Railroad Company's property, of which it assumed control three months after the beginning of the year, or on October 1, 1899.

The general result of the business of the system comprising the Brooklyn Rapid Transit Company and constituent companies, for the fiscal year ending June 30, 1900, showed gross earnings from passengers, freight, mail and express, advertising, rents and miscellaneous income of $11,768,550; expenses of $7,106,373 net; earnings of $4,662,177; fixed charges and taxes of $4,135,405, yielding a surplus of $526,772. Adding to this the surplus of June 30, 1899, $96,654, gives a total surplus on June 30, 1900, of $623,426.

The fiscal year opened inauspiciously with a strike, declared on July 16, the effect of which, though the actual operation of the cars was interfered with but for a brief period, was nevertheless far-reaching, and was reflected in receipts and operating expenses for several months thereafter.

Progress has been steadily made throughout the year in developing plans outlined in the previous year's report for the general improvement of the property. The only new route built upon during the year was an extension of the Reid Avenue surface line to connect with the Church Avenue line of the Nassau system, giving a new means of access to Holy Cross cemetery. To permit of
645 the establishment of new routes and to eliminate needless depots a number of physical connections have been made between the Brooklyn Heights system and its newly acquired lines. The parcel of land which was acquired last year contiguous to the general car and machine shops at Fifty-second street, and which was necessary for the expansion of the old shops, has been built upon, and a model machine shop fully equipped with the latest and best types of tools and machinery, yielding an additional floor space of 45,000 square feet, was completed and occupied in June, 1900. These shops are of ample capacity to maintain all surface car equipment as well as the electrical equipment of the entire system, surface and elevated, all of which work is now being concentrated at that point.

Upon the elevated lines 13.23 miles of new steel rail (1,646 tons) have been laid, and a considerable portion of the floor system and guard timbers renewed, while several miles of safety walk and guard hand-rail have been constructed. There has also been installed on

the elevated lines 32.29 miles of third-rail conductor, and electricity substituted for oil and gas in the lighting of all stations. A new track connection, together with combined waiting-room for elevated and surface passengers, has been constructed upon land purchased at East New York, permitting the operation of through trains over the Brooklyn Union and Kings County Elevated lines, and enabling, also, thereby the consolidation of the repair shops of the elevated system.

For the purpose of regulating the electric power upon the elevated lines and Brooklyn bridge, and to assist the operation of the Brighton Beach road, three storage batteries have been installed, one located at the Brooklyn terminal of the bridge, one at East New York, and one at Sheepshead Bay; these batteries having a total capacity of about 3,000 horse-power.

Large additions have been made during the year to the equipment of the surface lines, including 330 open car bodies and
646 trucks, 250 closed car bodies and trucks, 1,652 motors and controllers, and five snow plows. To the elevated equipment has been added during the year 25 cars and trucks, 48 motors and controllers, and a considerable sum expended in the electrical equipment of cars. The details of expenditures for construction and equipment for the fiscal year are given in the statement on page 16.

A considerable portion of the work mentioned was contracted for in the early part of 1899 while your company had the benefit of lower prices. Owing to the demand for material during the latter part of 1899, and the early part of 1900, considerable difficulty was encountered in securing material, which necessarily caused serious delay in completing much of the work outlined. For that reason many of the improvements have only within the last six months begun to show a lessened cost of operation.

At the beginning of the fiscal year the entire elevated system was operated by locomotives. In July, 1899, a partial electric service was inaugurated via the Fifth Avenue Elevated and Culver lines to Coney island, and since February, 1900, the Fifth Avenue line has been operated wholly with electric motor cars. In November, 1899, electric motor cars were put in operation on the Fulton Street–Brighton Beach line, and have since that time been continuously operated. While the third-rail construction on Fulton street and Lexington avenue was completed early in the winter, on account of the unavoidable delay in the arrival of electric motor cars and the completion of the new elevated railroad loop connection at Manhattan crossing, East New York, electric operation was not inaugurated upon these lines until last July, or after the close of the fiscal year.

On April 1, 1900, the railroad property, franchises, etc., of the Nassau Electric Railroad Company were leased to the Brook-
647 lyn Heights Railroad Company for the period of 999 years; the terms of the lease providing that in addition to the interest on bonded indebtedness, and the assumption of taxes and organization expenses, a rental should be paid of not less than four per

cent. per annum on $6,500,000, par value, of Nassau Electric Railroad Company's preferred cumulative stock. As will be noted on its list of assets, all but $448,000, par value, of this stock is the property of the Brooklyn Rapid Transit Company.

Prior to the purchase and consolidation of the various properties now in this system there were fifteen different railroads operated by ten distinct companies and separate managements. At the present time these are all combined under one management. In order to simplify the organization several mergers have been accomplished during the past year.

On March 21, 1899, the Sea View Railroad Company acquired by foreclosure sale the property and railroad of the old Brooklyn and Brighton Beach Railroad Company, and on May 9, 1900, the Sea View Railroad Company was merged into and with the Kings County Elevated Railroad Company by certificate filed with the secretary of State of New York, and all outstanding mortgages on both the Brighton Beach railroad and the Sea View railroad have been extinguished and all bonds canceled. By this purchase and merger the Kings County Elevated Railroad Company came into possession of, approximately, twenty miles of additional railroad possessing private right of way, and affording as an extension of its own lines one of the best and quickest routes to Coney island, Brighton and Manhattan beaches, with ample terminal facilities. The hotel at Brighton beach was also comprised in this purchase. On May 21, 1900, the Kings County Elevated railroad was merged into and with the Brooklyn Union Elevated Railroad Company.

The renewal of the lease of the Brooklyn Union Elevated Railroad Company to the Brooklyn Heights Railroad Company,
648 on April 1, 1900, therefore, gives the Brooklyn Heights Railroad Company the entire control of all the elevated railroads in Brooklyn, upon the assumption of all taxes, fixed charges and organization expenses, with an additional rental of $100,000 per annum.

There are owned by the various companies some fifty-two separate parcels of land not required for railroad purposes, many of these having buildings thereon, with an aggregate value of, approximately, $1,800,000. The assessed value of these combined properties on the last assessment roll amounted to $1,561,800. Sales of this property are being made from time to time, the proceeds being applicable for improvements and betterments. The funds thus realized do not, of course, increase interest or fixed charges, while the disposition of needless real estate actually reduces the items of taxes and realty maintenance.

A complete and detailed report of the operation of the Brooklyn rapid transit system will be found in the auditor's statements appended hereto, and for the purpose of giving an intelligent knowledge of the growth of the roads now forming the system their earnings have been combined for each of the seven years prior to June 30, 1900, and are given in the statement on page 17, together with operating expenses, taxes, fixed charges, surplus and deficit.

At the end of the fiscal year your company possessed in supplies on hand, mainly for construction purposes, rails, special work, ties, etc., to the value of $233,888.35; locomotive and car-shop supplies, consisting of electrical supplies, castings, wheels, iron, etc., to the value of $202,403.19; electric line supplies, poles, wire, etc., $26,466.55; power-station supplies, coal and miscellaneous, $53,868.79, or a total of $516,606.88.

Each fiscal year since the inauguration of the Brooklyn rapid transit system has seen a considerable extension of track mileage, naturally yielding increased earnings; but notwithstanding
649 the fact that less than two miles of new track was added during the fiscal year ending June 30, 1900, and the car mileage reduced 1,600,000 car miles, as shown by the auditor's report, operation for the year resulted in largely increased passenger earnings.

During the fiscal year your company has paid directly and indirectly in city and State taxes and through free transportation of policemen and firemen over $1,000,000, or about 9 per cent. of its gross earnings, and is the largest single taxpayer in the borough of Brooklyn. The taxes, direct and indirect, paid by the company represent about $2,900 of earnings for each day in the year.

To the 8,076 employees upon its pay-rolls at the close of the year your company has paid in salaries and wages $4,691,878.50.

On January 1, 1900, a plan of seniority rating for motormen and conductors became effective, whereby the pay of these employees was based upon length of service. All motormen and conductors who had been in the employ of the company on August 1, 1899, for a period of two years received 5 per cent. increase in pay; those in the employ of the company three years, 10 per cent. increase; and those in the employ of the company five years, 15 per cent. increase; the various grades being indicated by stripes worn on the sleeve of the uniform.

These seniority lists are to be rearranged each year, on August 1, and the increased number of men who became eligible on August 1 last to the first, or highest grade, bears gratifying testimony to the appreciation of your company's employees, and is reflected in the increased efficiency of operation, and the decrease of avoidable accidents.

There was paid during the year in the settlement of negligence claims $797,789.91, or 6¾ per cent. of the gross receipts, and
650 in addition, for legal expenses in connection with negligence claims, the sum of $106,068.06, making a total of $303,857.97. Your company has pursued the policy of not taking into court actions which should and could be compromised, and the wisdom of this policy is shown by the fact that out of the 565 actions disposed of in court during the year 407, or over 72 per cent., were victories for the company. Notwithstanding this success, however, suits multiply, and the evils with which we are obliged to contend in negligence litigation are sufficiently great to demand rebuke from the courts and the self-respecting members of the bar. For all

damages for which your company is responsible it expects to make ample compensation, and it is sparing no efforts to reduce to a minimum the necessity for such expenditure; but against the scandalous attempts of unscrupulous attorneys to mulct the company by the prosecution of fraudulent suits, your company needs and asks the co-operation and assistance of the courts and the public. The evils which exist are a menace to justice and taint the good name of an honorable profession.

The present physical condition of the property affords a gratifying comparison with that of any existing system of street railways, both in track and overhead construction, equipment and power facilities, while the natural increase in revenue and the decrease in operating expenses, gradual though it be, is a gratifying indication of improved conditions and an earnest of future possibility in the same direction.

Well considered plans for further relief of the existing congestion on the Brooklyn bridge during the commission hours are awaiting indorsement by the bridge authorities, and will, it is confidently hoped, result in largely improved facilities for handling the traffic on that structure and inure greatly to the convenience of the traveling public.

BOARD OF DIRECTORS,
By C. L. ROSSITER, *President.*

651 *Income Account for Year Ending June* 30, 1900.

Receipts.

Interest on bonds owned		$239,549 40
Net profits, Brooklyn Heights R. R. Co		275,724 76
Other income		176,902 81
Total		$692,176 97

Expenses.

Interest on bonds and loans	$355,662 49	
Taxes on capital stock	40,000 00	
Sundry expenses	50,371 32	
		$446,033 81
Surplus		$246,143 16
Surplus July 1, 1899		54,541 40
Surplus, constituent companies, June 30, 1900		
Nassau Electric R. R. Co	$215,000 00	
Brooklyn Union E. R. R. Co	153,315 32	
Total	$368,315 32	
Brooklyn, Queens Co. and S. (deficit)	45,574 13	
		322,741 19
Total surplus, June 30, 1900		$623,425 75

Comparative Statement of Brooklyn Rapid Transit and Constituent Companies for Years Ending June 30, 1900, and 1899.

Receipts.

	1900.	1899.	Increase.	Decrease.
Passengers	$11,206,716	$10,793,984	$412,732	
Freight, mail and express	61,305	36,791	24,514	
Advertising	108,783	109,487		$704
Rents	167,253	140,811	26,442	
Other miscellaneous income	224,493	234,960		10,467
Total	$11,768,550	$11,316,033	$452,517	

Expenses.

Maintenance of way	$415,729	$374,947	$40,782	
Maintenance of equipment	882,183	983,216		$101,033
Operation of power plant	964,665	948,749	15,916	
Operation of cars	3,551,476	3,593,367		41,891
General expenses	494,530	582,175		87,645
Damages	797,790	738,837	58,953	
Total	$7,106,373	$7,221,291		$114,918
Net earnings	$4,662,177	$4,094,742	$567,435	

652 Deductions.

	1900.	1899.	Increase.	Decrease.
Taxes	$736,721	$636,635	$100,086	
Net fixed charges	3,398,684	3,659,988		*$261,304
Total	$4,135,405	$4,296,623		$161,218
Surplus or deficit	(S.)$526,772	(D. $201,881	$728,653	
Surplus June 30, 1899	96,654			
Total surplus June 30, 1900	$623,426			

The operations of the Kings County Elevated for July, August and September, 1899 and 1898, are not included in above, the company having been operated independently during that period.

*This decrease was effected through the refunding of the securities of the Brooklyn Union Elevated and Kings County Elevated systems by their reorganizations on February 1, 1899, and August 1, 1899, respectively.

Condensed Balance Sheet for All Companies, June 30, 1900.

Assets.

Cost of road and equipment	$85,984,973 47
Additions and betterments not yet distributed	85,773 39
Equity Brooklyn City construction	5,018,105 10
Equity Prospect Park and Coney Island construction	108,426 96
Guarantee fund	4,005,755 00
Treasury bonds	5,513,000 00
Stock Brooklyn Rapid Transit Co	146,228 00
Accounts receivable	311,903 62
Prepaid insurance	34,260 51
Supplies	516,606 88
Cash on hand	1,470,287 54
Total	$103,195,320 47

Liabilities.

Capital stock, Brooklyn Rapid Transit Co		$45,000,000 00
Capital stock, constituent Cos. not owned by Brooklyn Rapid Transit Co.—		
Nassau pref., outstanding	$448,000 00	
Brooklyn Union Elevated pref., outstanding	285,646 58	
Brooklyn Union Elevated common, outstanding	807,027 87	
		1,540,674 45
653 Funded debt—		
Sea Beach Ry. Co	$650,000 00	
Brooklyn, Queens County and Suburban R. R	6,574,000 00	
Brooklyn Heights R. R. Co	250,000 00	
Brooklyn Rapid Transit Co	7,000,000 00	
Nassau Electric R. R. Co	15,000,040 00	
Brooklyn Union Elevated R. R. Co	23,000,000 00	
		52,474,040 00
Loans		1,000,000 00
Interest accrued		116,578 62
Taxes accrued		596,052 04
Rentals accrued		686,140 19
Audited vouchers		641,396 85
Accounts payable		110,106 30
Real estate mortgages		226,725 00
Contingent liabilities		180,181 27
Surplus		623,425 75
Total		$103,195,320 47

Memorandum of Treasury Assets.

Stock.

$146,228 00	par value	Brooklyn Rapid Transit Company.
200,000 00	"	Brooklyn Heights R. R. Co.
2,000,000 00	"	Brooklyn, Queens Co. and Suburban R. R. Co.
8,500,000 00	"	Nassau Electric R. R. Co., common
6,052,000 00	"	" " " 4 per cent. cumulative guaranteed preferred.
12,192,972 13	"	Brooklyn Union Elevated R. R. Co., com.
4,714,353 42	"	" " " " pref.
650,000 00	"	Sea Beach Railway Co.
35,400 00	"	Coney Island and Gravesend Railway Co.
$34,490,953 55	Total.	

Bonds.

$2,000,000 00	par value	Brooklyn, Queens Co. and Suburban, first mortgage bonds.
1,627,000 00	"	Brooklyn Cisy R. R. Co., first mtge. bonds.
375,000 00	"	Brooklyn Rapid Transit Co. Gold 5's.
3,111,000 00	"	Brooklyn Union Elevated. First mtge. 4–5's.
2,000,000 00	"	Kings County Elevated. First mortgage 4's.
27,000 00	"	Nassau Electric. First consolidated 4's.
$9,140,000 00		
$43,630,953 55	Grand total.	

654 *Comparative Statement of Receipts and Operating Expenses, Brooklyn Heights Railroad Company and Leased Lines, for the Years Ending June 30, 1900 and 1899.*

Receipts.

	1900.	1899.	Inc. or dec.
Passenger	$11,206,716 01	$10,793,984 53	$412,731 48—I
Freight, mail and express	61,305 84	36,790 57	24,515 27—I
Advertising	108,782 40	109,487 59	705 19—D
Rent of land and buildings	70,763 48	38,622 36	32,141 12—I
Rent of track and structure	96,490 51	102,188 59	5,698 08—D
Miscellaneous	44,451 88	52,534 28	8,082 40—D
Total	$11,588,510 12	$11,133,607 92	$454,902 20—I

Maintenance of way and structures.	Opr. per cent. gr. earn.	1900.	Opr. per cent. gr. earn.	1899.	Inc. or dec.
Track and roadway	01.86	$215,971 98	01.85	$205,836 48	$10,135 50—I
Electric line	00.92	106,167 75	01.06	118,799 78	12,632 03—D
Buildings and fixtures	00.81	93,589 56	00.46	50,310 79	43,278 77—I
Total	03.59	$415,729 29	03.37	$374,947 05	$40,782 24—I
Maintenance of Equipment.					
Steam plant	00.46	$54,105 72	00.37	$41,923 09	$12,182 63—I
Electric plant	00.06	6,765 72	00.04	6,570 46	195 26—I
Cable plant	00.04	5,296 49	.....	706 26	4,590 23—I
Cars	02.76	319,648 68	03.56	390,376 60	70,727 92—D
Elec. equipment of cars	02.65	306,891 01	03.18	354,011 74	47,120 73—D
Locomotives	00.47	54,092 62	00.62	70,066 46	15,973 84—D
Miscellaneous equipment	00.14	16,382 92	00.11	13,330 61	3,052 31—I
Miscellaneous shop expenses	01.03	119,000 19	00.95	106,230 41	12,769 78—I
Total	07.61	$882,183 35	08.83	$983,215 63	$101,032 28—D

Maintenance of way and structures.	Opr. per cent. gr. earn.	1900.	Opr. per cent. gr. earn.	1899.	Inc. or dec.
Wages	01.70	$196,567 66	01.72	$191,227 25	$5,340 41—I
Fuel, elec. and cable	02.95	341,854 75	02.70	300,117 65	41,737 10—I
Fuel, locomotives	02.73	316,228 23	03.14	351,184 37	34,956 14—D
Water for power	00.40	46,373 90	00.42	46,580 98	207 08—D
Lubricants and waste	00.18	20,700 50	00.18	20,092 42	608 08—I
Other supplies and expenses	00.28	31,855 46	00.17	18,422 08	13,433 38—I
Hired power	00.09	11,084 15	00.19	21,124 21	10,040 06—D
Total	08.33	$964,664 65	08.53	$948,748 96	$15,915 69—I
Operation of Cars.					
Superintendence	01.59	$184,005 66	01.39	$155,348 59	$28,657 07—I
Conductors and motormen—surface	16.84	1,951,117 34	18.49	2,057,755 51	106,638 17—D
Engineers, firemen, motormen—el	02.64	306,204 27	02.82	313,243 64	7,039 37—D
Conductors and brakemen—el	02.00	232,902 64	01.98	219,953 18	12,949 46—I
Other car service	04.32	500,271 50	04.17	464,659 71	35,611 79—I
Car house employees	01.43	165,342 89	01.54	171,660 64	6,317 75—D
Car supplies	00.45	51,948 93	00.47	52,071 80	122 87—D
Other car expenses	01.16	134,639 32	00.77	85,453 71	49,185 61—I
Cleaning and sanding track	00.06	6,702 90	00.09	10,253 09	3,550 19—D
Removal snow and ice	00.16	18,340 63	00.57	62,967 61	44,626 98—D
Total	30.65	$3,551,476 08	32.29	$3,593,367 48	$41,891 40—D

Salaries, general officers	00.45	$51,966 57	00.84	$93,111 75	$41,145 18—D
Salaries, clerks	00.78	90,052 92	01.03	115,211 56	25,158 64—D
Printing and stationery	00.16	18,817 08	00.17	18,409 68	407 40—I
Miscellaneous office expenses	00.16	18,227 04	00.17	19,001 53	774 49—D
Advertising and attractions	00.18	20,139 67	00.10	11,126 72	9,013 95—I
Other expenses	00.60	69,446 76	00.66	74,149 50	4,702 74—D
Damages	06.88	797,789 91	06.64	738,837 23	58,952 68—I
Legal exp. in con. damages	00.92	106,068 06	01.15	126,854 11	20,786 05—D
Other legal expenses	00.08	9,434 47	00.22	24,410 87	14,976 40—D
Rent of land and buildings	00.04	4,819 10	00.27	30,024 03	25,204 93—D
Rent of track and terminals	00.19	22,165 87	00.27	30,051 19	7,885 32—D
Insurance	00.22	25,512 56	00.24	27,092 68	1,580 12—D
Taxes	06.01	696,720 80	05.46	607,801 32	88,919 48—I
Total	16.67	$1,931,160 81	17.22	$1,916,081 17	$15,079 64—I
Grand total	66.85	$7,745,214 18	70.24	$7,816,360 29	$71,146 11—D
Mileage	.....	53,053,330	.....	54,649,266	1,595,936—D
Total passengers carried, including transfers	.....	272,560,074	.....	265,280,728	.....

Class of bonds.	Date.	Due.	Amount authorized.	Amount outstanding.	Rate.	Interest when payable.	Annual interest.
Brooklyn Rapid Transit:							
Fifty (50) year gold	Oct. 1, '95	Oct. 1, 1945	$7,000,000	$6,625,500	5 per cent.	A—O	$331,250
Brooklyn Heights R. R.:							
First mortgage	Apr. 1, '91	Apr. 1, 1941	250,000	250,000	5 " "	A—O	12,500
B'klyn, Queens Co. and Sub.:							
* (*a*) First mortgage	Jan. 16, '94	July 1, 1941	3,500,000	3,500,000	5 " "	J—J	175,000
* First consolidated mortgage	Jan. 16, '94	July 1, 1941	4,500,000	2,834,000	5 " "	M—N	141,700
Jamaica and Brooklyn:							
First mortgage	Sept. 4, '89	Jan. 1, 1930	240,000	240,000	5 " "	J—J	12,000
Sea Beach Railway:							
Consolidated mortgage	Sept. 1, '96	Sept. 1, 1916	650,000	650,000	4 " "	M—S	26,000
Nassau Electric R. R.:							
‖ First mortgage	Apr. 16, '94	Apr. 1, 1944	660,000	660,000	5 " "	A—O	33,000
(*c*) First consol. mortgage	June 30, '98	Jan. 1, 1951	15,000,000	10,447,000	4 " "	J—J	417,880
Atlantic Avenue R. R.:							
‖ First consol. mortgage	Sept. 30, '84	Oct. 1, 1909	732,000	732,000	5 " "	A—O	36,600
‖ General consol. mortgage	Apr. 23, '91	Apr. 1, 1931	2,241,000	2,241,000	5 " "	A—O	112,050
‖ Improvement	Jan. 1, '94	Jan. 1, 1934	220,000	220,000	5 " "	J—J	11,000
Brooklyn, Bath and West End:							
‖‡ General mortgage	Oct. 2, '93	Oct. 1, 1933	121,040	121,040	5 " "	A—O	6,052
‖‡ First mortgage, series A	Dec. 28, '86	Jan. 1, 1907	250,000	250,000	5 " "	J—J	12,500
‖‡ First mortgage, series B	Dec. 28, '86	Jan. 1, 1917	250,000	250,000	5 " "	A—O	12,500
‖‡ Second mortgage	July 1, '91	June 1, 1911	52,000	52,000	5 " "	J—D	2,600
659 Brooklyn Union Elevated:							
† (*c*) First consol. mortgage	Feb. 1, '99	Feb. 1, 1950	16,000,000	16,000,000	4 " "	F—A	640,000
Kings Co. Elevated R. R.:							
(*d*) First mortgage	July 25, '99	Aug. 1, 1949	7,000,000	7,000,000	4 " "	F—A	280,000
Brooklyn City railroad:							
* (*b*) First consol. mortgage	July 1, '91	July 1, 1941	6,000,000	6,000,000	5 " "	J—J	300,000
N. W'msburg & Flatbush:							
(*) First mortgage	Feb. 1, '97	July 1, 1941	200,000	200,000	4½ " "	F—A	9,000

Greenpoint & Lorimer:								
First mortgage	May 1, '85	May 1, 1910	125,000	125,000	6 " "	M—N	7,500
Brooklyn Crosstown:								
First mortgage	June 27, '88	July 1, 1908	200,000	200,000	5 " "	J—J	10,000
Calvary Cem. & Greenpoint:								
First mortgage	June 1, '87	June 1, 1907	200,000	200,000	6 " "	J—D	12,000
Grand St. & Newtown:								
First mortgage	July 1, '86	Aug. 1, 1906	200,000	200,000	5 " "	O—A	10,000
Totals			$61,065,040	$58,997,040			$2,611,132

NOTE.—(*a*) $2,000,000 owned by Brooklyn Rapid Transit Company and constituting a portion of guarantee fund for performance of Brooklyn City Railroad Company lease.

(*b*) $1,627,000 owned by Brooklyn Rapid Transit Company and constituting a portion of guarantee fund for performance of Brooklyn City Railroad Company lease.

(*c*) $3,111,000 owned by Brooklyn Rapid Transit Company.

(*d*) $2,000,000 owned by Brooklyn Rapid Transit Company.

(†) Five per cent. (5%) after February 1, 1905.

(*) Subject to call in 1916.

(‡) Subject to call any time before maturity.

$52,500 first mortgage bonds of Sea View R. R. retired and cancelled on May 9, 1900.

$27,000 first consolidated mortgage bonds of Atlantic Avenue railroad retired and cancelled during the year and $27,000 first consolidated mortgage bonds of Nassau Electric railroad issued in lieu thereof and held in treasury of Nassau Electric R. R. Company.

(*e*‖) $4,526,000 first consolidated mortgage bonds of Nassau Electric railroad, reserved for retiring prior lien bonds of Nassau, Atlantic Avenue and B. B. & W. E. R. R. Cos.

660 *Statement of Amount Expended for Construction and Equipment During the Year Ending June 30, 1900.*

Surface lines.

Equipment:

Paid on account of contracts for 330 open car bodies and trucks; 250 closed car bodies and trucks; 1652 motors and controllers, and 5 snow plows.....		$1,256,642 24

Track and roadway, O. H. construction:

Brooklyn City lines.....	$129,422 66	
Nassau Electric lines.....	74,114 79	
Prospect Park and Coney Island R. R..	82,402 33	
Brooklyn, Queens County and Suburban R. R.	13,949 13	
		299,888 91

Buildings and fixtures:

New shop and machinery at 52d street and air plants at various depots.....	$131,521 66	
Unionville station.....	3,161 10	
		134,682 76

Power stations:

Brooklyn City Co., Eastern and Southern stations	$15,403 81	
Nassau Electric R. R. Co. Third Avenue and 39th Street stations.....	14,915 38	
		30,319 19

Elevated lines and connections.

Equipment:

Paid on account of contracts for 25 cars and trucks; 48 motors and controllers; electrical equipment of cars.....		$187,937 79

Track and roadway—reconstruction and electrical equipment of tracks:

Brooklyn Union Elevated.....	$262,900 29	
Kings County Elevated.....	19,776 94	
Sea View railroad.....	17,446 26	
		300,123 49

Buildings and fixtures:		
Brooklyn Union Elevated, for new station; East New York loop; extension of station; Bridge Street reconstruction and electrical equipment of stations	$37,110 83	
Kings Co. Elevated R. R. Co., electrical equipment of stations	4,806 66	
Sea View R. R. Co., Brighton Beach hotel	56,324 48	
		98,241 97
Storage batteries		80,807 28
Grand total		$2,388,643 63

661 *Statement of Receipts, Expenses, Fixed Charges, etc., of the Combined Railroads Forming the Present System Operated by the Brooklyn Heights R. R. Co., for the Past Seven (7) Years.*

Years ending June 30.	Gross receipts.	Operating expense excluding taxes.	Taxes.	Net fixed charges.	Surplus or deficit.	
1894	$8,811,333.61	$5,685,204.39	$545,940.89	$2,772,778.07	Deficit	$192,589.74
1895	8,916,896.66	5,961,151.01	549,983.42	3,349,535.73	Deficit	943,773.50
1896	9,576,935.65	5,806,036.78	606,468.85	3,491,259.52	Deficit	326,829.50
1897	9,704,977.42	5,910,942.34	459,922.50	3,747,249 76	Deficit	413,137.18
1898	10,228,768.71	6,400,893.41	416,012.76	3,853,523 28	Deficit	441,660.74
1899	11,314,161.54	7,313,647.37	608,985.86	3,729,593.65	Deficit	338,065.34
1900	11,747,626.84	7,194,237.17	707,506.49	3,101,413.45	Surplus	744,469.73

Fixed charges no not include the following: Interest on bonds of various companies held by Brooklyn Rapid Transit Company; rental paid to Nassau Electric and Brooklyn Union Elevated Railroad Companies; interest on Brooklyn Rapid Transit bonds.

662 *Annual Rentals Payable by Brooklyn Heights R. R. Co.*

As of date July 1, 1900.

To Brooklyn City R. R. Co. (in addition to organization expenses and taxes). Interest on bonds.....	$348,500 00	
Ten per cent. per annum on its capital stock of $12,000,000.....	1,200,000 00	
		$1,548,500 00
To Brooklyn, Queens Co. & Suburban R. R. Co. (in addition to organization expenses and taxes). Interest on bonds.....		328,700 00
To Sea Beach R. R. Co. (in addition to organization expenses and taxes). Interest on bonds.....		26,000 00
To Nassau Elec. R. R. Co. (in addition to organization expenses and taxes). Interest on bonds.....	$644,182 00	
Under terms of lease dated April 1, 1900, not less than four per cent. interest on $6,500,000 par value of cumulative preferred stock.....	260,000 00	
		904,182 00
To Brooklyn Union Elev. R. R. Co. (in addition to organization expenses and taxes). Interest on bonds....	920,000 00	
Under terms of lease, dated April 1, 1900.....	100,000 00	
		1,020,000 00
To Prospect Park & Coney Island R. R. Co., New York & Coney Island R. R. Co., Prospect Park & So. Brooklyn R. R. Co., for properties of these companies leased for 999 years.....		40,000 00
		$3,867,382 00

Of the above rentals the Brooklyn Transit Company, and its constituent companies, will receive $805,809.50.

663 *Miles of Railroad Operated by Brooklyn Heights R. R. Co.*

	Single track.	Second track.	Sidings and turnouts.	Total.
Brooklyn Heights R. R.	.59	.59	.086	1.266
Brooklyn City R. R.	103.62	98.523	3.507	205.650
Brooklyn, Queens Co. and Suburban R. R.	24.15	22.90	.17	47.22
Nassau Electric R. R.	61.77	61.44	6.49	129.70
Sea Beach railway	6.14	6.14	1.57	13.85
Coney Island and Gravesend railway	3.16	3.16	.11	6.43
Prospect Park and Coney Island R. R.	9.76	7.96	7.35	25.07
Brooklyn Union Elevated R. R.—				
Elevated lines	28.70	28.70	10.424	67.824
Surface lines	8.30	8.30	3.31	19.91
New York and Brooklyn Bridge R. R.	1.30	1.30	1.00	3.60
Trackage rights on Coney Island and Brooklyn R. R.	1.53	.84	.....	2.37
Total miles operated	249.02	239.853	34.017	522.89

Equipment Owned and Leased by Brooklyn Heights R. R. Co.

Surface lines.

Closed cars, motor and cable	1,327
Open cars, motor and cable	1,545
Mail cars, motor	8
Express cars, motor	10
Freight and service cars, motor	81
Service cars, other than motor	7
Snow plows, motor	49
Sweepers	39

Elevated lines.

Closed cars, motor	91
Closed cars, other than motor	492
Open cars, other than motor	61
Freight and coal cars	28
Total cars, all kinds	3,738
Total locomotives	142

664 *Power Station Equipment, Brooklyn Rapid Transit System.*

	Boilers.		Engines.		Generators.	
	Number.	H. P. capacity.	Number.	H. P. capacity.	Number.	K. W. capacity.
Eastern station	34	8,500	6	12,000	6	9,200
Southern station	16	4,000	6	6,000	12	4,800
Ridgewood station	8	2,000	3	2,100	6	1,800
Third Ave. station	20	5,000	9	6,650	9	4,400
39th St. station	10	2,500	4	4,500	4	3,560
Bridge station	14	1,800	6	3,875	2	800
Cable station	2	500	1	225	....	.....
	104	24,300	36	35,350	39	24,560

The above power capacity is supplemented by three storage batteries with capacity of 4,000 ampére hours, or 2,200 K. W. hours.

W. B. LONGYEAR, *Auditor.*

665 DEFENDANT'S EXHIBIT No. 37.

Brooklyn Rapid Transit Company.

President's First Annual Report to Stockholders, June 30, 1899.

Officers.

A. N. Brady, chairman of board,
C. L. Rossiter, president, H. C. DuVal, vice-president,
T. S. Williams, secretary and treasurer.

Directors.

A. N. Brady,
C. L. Rossiter, D. H. Valentine,
Henry Seibert, John D. Keiley,
John G. Jenkins, John Englis,
Theo. F. Jackson, H. C. DuVal,
Wm. C. Bryant, Chas. D. Meneely,
S. L. Keeney, T. S. Williams.

Brooklyn Rapid Transit Co.

President's Report to Stockholders for Year Ending June 30, 1899.

168 MONTAGUE STREET,
BROOKLYN, *August* 21, 1899.

To the stockholders:

The fiscal year ending June 30, 1899, was a particularly important one for the Brooklyn Rapid Transit Company, marking as it did the

acquisition of additional properties, the combination of which with the railroad properties previously controlled by the Brooklyn Rapid Transit Company gives the company control of practically all the street railroad system of Brooklyn, and presents an opportunity
666 for great economies and increased earnings. On June 30, 1898, your system included 266.5 miles of railroad (single track), and during the year preceding had shown passenger earnings of $5,491,664. On June 30, 1899, the system comprised (including the Kings County Elevated Railroad Company, which has been contracted for, but possession of which has not yet been given) 504 miles of single track, with over 200 miles of franchises yet unbuilt, and the combined passenger earnings for the year then ending were $11,035,216, to which should be added $358,057, representing earnings from miscellaneous sources, making a total earning capacity for the year of $11,393,273.

These earnings were based almost entirely on former conditions, for of the new properties acquired the Brooklyn Union Elevated Railroad Company and Nassau Electric Railroad Company were taken over only on April 1, 1899, the Kings County Elevated Railroad Company while contracted for has not yet been taken over, the Brooklyn and Brighton Beach railroad was formally opened for business only on May 30, 1899, and regular operation was not begun until some weeks later, and the Prospect Park and Coney Island railroad, with allied lines, was not acquired until June 17, 1899. There has been possible, therefore, during the period covered by the above-mentioned earnings, no such increase as is expected by closer relations between the companies, combinations of routes, and change of motive power from steam to electricity, thereby furnishing swifter and more comfortable transit between the heart of the city and the outlying portions, and leaving the now overcrowded cars on the surface free to do the more profitable short business.

Below are set forth the railroad companies acquired by the Brooklyn Rapid Transit Company during the year just ending, with the mileage of each, the capital stock and the proportion of capital stock acquired by your company, the fixed interest charges of the companies as acquired, and the gross earnings for the year ending March 31, 1899, just prior to acquisition:

Companies acquired.	Mileage.	Capital stock.	Amount of stock acquired by B. R. T. Co.	Fixed interest charges as acquired.	Earnings year ending Mar. 31, 1899.
Nassau Electric R. R. Co.	129.70	Pref., $6,500,000 Com., 8,500,000	$6,052,060 00 8,499,716 00	$585,530	$2,201,885
Coney Island & Gravesend R. R.	6.43	35,400	35,400 00	None	
Brooklyn Union Elevated R. R.	41.89	Pref., 3,830,160 Com., 12,926,700	3,536,300 03 11,976,235 87	515,600	1,744,344
Kings County Elevated R. R.	21.72	Pref., 2,800,000 Com., 6,000,000	2,800,000 00 6,000,000 00	200,000	655,676
Brooklyn & Brighton Beach R. R.	17.86	None	None	None	*40,000
Prospect Park & Coney Island R. R. New York & Coney Island R. R. Prospect Park & So. Brooklyn R. R.	17.34 2.41 1.15	Leased	Leased	40,000	*111,000
Total	238.50	$40,592,260	$38,899,651 90	$1,341,130	$4,752,905

* Estimated.

668 *Cost of Consolidation.*

In order to acquire these properties and to furnish money for electrically reconstructing and equipping the Brooklyn and Brighton Beach railroad and the Prospect Park and Coney Island railroad, your company has increased its stock from $20,000,000 to $45,000,000, of which $43,000,000 is now issued, and the remaining $2,000,000 is to be issued in exchange for the entire capital stock, common and preferred, of the Kings County Elevated Railroad Company. Thus, by an issue of $25,000,000 of its stock, your company has acquired stocks of other companies whose par value is $38,899,651.90, besides the actual purchase of the old Brooklyn and Brighton Beach railroad track, rights of way and hotel property, without stock or bonds ($2,000,000 of the bonds and stock of the old company having been extinguished), and has been able to reconstruct as first-class electric railroads both this property and the Prospect Park and Coney Island railroad, the lease of which for 999 years has been effected to one of the Brooklyn rapid transit constituent companies. Moreover, the companies thus acquired have just emerged from reorganization process, whereby their floating debts have been entirely extinguished, except a comparatively small amount in the case of the Nassau Electric Railroad Company, and their annual fixed charges for interest have been reduced as follows:

Brooklyn Union Elevated railroad, from about	$745,000	to $515,600
Kings County Elevated Railroad Company, from about	318,000	" 200,000
Nassau Electric Railroad Company, from about	850,000	" 585,530
Brooklyn and Brighton Beach railroad, from about	50,000	" Nothing.

The total net reduction in fixed charges of acquired companies effected by process of reorganization and before acquire-
669 ment by Brooklyn Rapid Transit Company is about $663,000 per annum.

The plan under which these acquired properties were reorganized took wise forethought of possible future needs, and as a result the Brooklyn Rapid Transit Company had on June 30, 1899, in unissued bonds, cash and unused real estate of its constituent companies construction resources which will take care of any possible extensions or improvements for very many years to come. These resources are as follows:

Bonds—

Brooklyn Union Elevated Railroad Company	$3,110,000
Kings County Elevated Railroad Company	2,000,000
Nassau Electric Railroad Company	1,500,000
Brooklyn, Queens County and Suburban Railroad Company	1,666,000
Brooklyn Rapid Transit Company	375,000
Real estate not needed for railroad purposes, about	1,800,000
Cash, about	800,000
Total	$11,251,000

The above bonds can only be issued for construction purposes upon proper certification to the trustees of the mortgages.

Largest Street Railroad System in the World.

It can therefore now be said of the Brooklyn rapid transit system:

1. That in mileage of track it is the largest street railway system in the world, comprising 504 miles, or more than twice the trackage of the Metropolitan Street Railway Company of New York, nearly 400 miles more than the Manhattan Elevated Railway Company of New York, 60 miles more than the Union Traction Company of Philadelphia, and 173 miles more than the Boston Elevated Railway Company, including the old West End Company. Of your company's mileage about 67 miles are on rights of way owned by the company, and are therefore not subject to any franchise tax.

670

2. That in amount of passenger earnings it surpasses every street railroad system in the world with the exception of the Metropolitan Street Railway Company of New York.

3. That its passenger earnings for the fiscal year ending June 30, 1899, were $11,035,216 (not including the Brighton Beach line during practically the entire year), which represents an increase in passenger earnings over the preceding year of $1,158,215, or nearly 12 per cent. This rate of increase has been without any such stimulus to traffic as is expected to result from electric operation of the elevated railroads and quicker transit by proposed combinations of surface and elevated routes.

4. That its gross earnings for the year beginning July 1, 1899—the first full year of operation as a combined system—will be not less than $12,000,000, while its entire net fixed charges after deducting payments between companies will be $3,406,000, which is somewhat less than the fixed charges of the Metropolitan Street Railway Company, and $2,200,000 less than the fixed charges of the Union Traction Company of Philadelphia. From the opportunities for economies which are presented by the combination of ele-

vated and surface properties, it would seem as if the system should be operated, including the payment of taxes, at not over 55 per cent. of the gross earnings under full electric operation, and this percentage should be reduced as economies are fully established. The Union Traction Company of Philadelphia operated during the year ending June 30, 1898, for 49 per cent., including taxes, and the Metropolitan Street Railway Company of New York for 58.89 per cent., including taxes.

671 *Comparison of Gross Passenger Earnings for Three Years of Companies Now in Brooklyn Rapid Transit System.*

Years ending June 30.

	1899.	1898.	1897.
Brooklyn Heights R. R. (including Brooklyn City & B. Q. C. & S. R. R.	$7,237,755	$5,482,288	$5,122,57
Brooklyn Union Elevated	*1,489,674	1,546,060	1,587,665
Nassau Electric	*1,558,698	2,054,080	1,760,562
Kings Co. Elevated	648,973	665,473	696,696
Brooklyn and Brighton Beach	.....	8,247	37,255
Sea View	1,679	9,376	6,854
Prospect Park and C. I.	98,437	111,477	131,654
	$11,035,216	$9,877,001	$9,343,263

The figures presented below cover the operation of your company during the year ending June 30, 1899, and do not, of course, include the figures of acquired companies prior to the time of acquisition, and the added properties were acquired so late in the fiscal year that practically none of the benefits of consolidation is shown in the reports for this year. The method of operation is to have all the railroad companies leased to the Brooklyn Heights Railroad Company, which is the operating company, and the income of the Brooklyn Rapid Transit Company consists of the surplus profits of the Brooklyn Heights Company, and such moneys as it may receive from the stocks and bonds held by it. The table below gives the operating statement of the Brooklyn Heights Company for the year ending June 30, 1899, with comparison for the preceding year, and includes the operation of the Brooklyn Heights Railroad Company, the Brooklyn, Queens County and Suburban Railroad Company, the Brooklyn City Railroad Company and the Sea Beach Rail-
672 way Company for the entire fiscal year, and of the Brooklyn Union Elevated Railroad Company and Nassau Electric Railroad Company for three months only of the fiscal year. For purposes of better comparison the figures of the leased companies for the corresponding period of the preceding year are combined with those of the Heights Company, although they were not at that time a part of the Brooklyn rapid transit system.

* Includes only 9 months. Remaining 3 months included in Brooklyn Heights Company's figures.

Operating Statement, Brooklyn Heights Railroad Company, Fiscal Year Ending June 30, 1899.

		1899.		1898.	Increase.	Decrease.
Gross earnings		$7,412,434 79		$6,616,360 58	$796,074 21	
Operating expenses—						
General exp., including taxes and insurance	$1,079,328 50		$902,852 26		176,476 24	
Transportation	2,246,711 42		2,175,923 00		70,788 42	
Maintenance of track, line and buildings	262,637 55		213,888 18		48,749 37	
Maintenance of equipment	589,552 58		501,947 92		87,604 66	
Maintenance of power	491,141 23		437,595 06		53,546 17	
		$4,669,371 28		$4,232,206 42	437,164 86	
Net earnings		$2,743,063 51		$2,384,154 16	358,909 35	
Income from other sources		12 77		*185,458 53		$185,445 76
Gross income		$2,743,076 28		$2,569,612 69	173,463 59	
Fixed charges		2,289,908 96		2,482,349 02		273,440 06
Surplus		$453,167 32		$87,263 67	365,903 65	

* Includes income from guarantee fund ($181,369.50), which in the succeeding year was paid directly to Brooklyn Rapid Transit Company, and did not pass through operating company's account.

674 Percentage of operating cost, 1899, 62.9 per cent., and in 1898, 63.9 per cent.

The above statement, as will be seen, shows particularly generous charges to maintenance of equipment, it being in line with your policy, as I understand it, that no expense shall be spared to keep the company's equipment in good, sound condition and the cars well painted, so as to present a neat appearance. The figures also include a charge of $529,212.29 to damages, a large part of which is on account of accidents occurring in preceding fiscal years. The fixed charges shown above include the rentals paid to leased companies, including the Nassau Electric Railroad Company and Brooklyn Union Elevated Railroad Company, most of whose stock is owned by the Brooklyn Rapid Transit Company. Your attention is particularly called to the fact that with an increase of $796,476 in earnings, the increase in transportation expense was only $70,788.

Income Account, Brooklyn Rapid Transit Company.

The income account of the Brooklyn Rapid Transit Company for the year ending June 30, 1899, as will be seen in the following table, shows total receipts of $842,375.11, out of which had been paid in interest on Brooklyn Rapid Transit bonds and for miscellaneous general expenses of the Brooklyn Rapid Transit Company, $379,825.86, leaving a surplus for the year of $462,549.25. The accumulated surplus prior to June 30, 1898, was $215,579.50, making a total surplus on June 30, 1899, of $678,128.75, earned almost entirely upon the old capitalization of $20,000,000. While the company would have been justified in distributing this surplus to the stockholders in the shape of a dividend, I think it has adopted the wiser course of using it for the strengthening of the company's condition and financial position, and has therefore appropriated toward new equipment and construction on railroad properties, $300,482.33, and toward extinguishing old deficiencies of the Brooklyn, Queens County and Suburban Railroad Company, which were ac-
675 crued prior to the acquisition of this company by the rapid transit company, and for which the rapid transit company was not responsible, $321,171.19. The result of these transactions is that the physical condition of the constituent companies is excellent, and their books are exceedingly clean.

Brooklyn Rapid Transit Company Income Account for Year Ending June 30, 1899.

Receipts:		
From interest on bonds and loans	$188,394 50	
From profit on bonds sold	182,000 84	
From miscellaneous	425 00	
From Brooklyn Heights R. R. Co.'s surplus	471,554 77	
		$842,375 11

Expenses:		
For interest	$338,261 09	
For taxes and miscellaneous expenses	41,564 77	
		379,825 86
Surplus for year		$462,549 25
Accumulated surplus prior to June 30, 1898		215,579 50
Total surplus June 30, 1899		$678,128 75
Deductions from surplus:		
For new equipment and construction on railroad properties	$300,482 33	
For extinguishing old deficiencies of B., Q. C. & S. R. R. Co., accrued prior to its acquisition by B. R. T. Co.	321,174 19	
Direct to profit and loss	1,930 83	
		623,587 35
Surplus carried forward		$54,541 40

676 *Plans for New Work.*

Regarding the plans of the company for the further improvement of your property, there are now being delivered under contracts entered into last spring, and for use this fall, 250 of the company's standard large double-truck cars, together with 900 40-horse power motors complete with controllers. These cars are all 25-foot bodies, mounted on double trucks, and aside from the fact of their being a very much easier riding and more comfortable car, their additional capacity will enable a substantial saving to be made in the cost of operation. In addition, all of the closed car equipment of the company is being overhauled and painted and put in thoroughly first-class condition as regards bodies, electric equipment, trucks, etc. The distribution of equipment will enable the company to furnish superior facilities for carrying passengers than have ever been possible before, and particular attention has been given to the suburban and outlying points reached by the lines of the company, with a view of offering every reasonable inducement to make access to these places convenient and quick.

In addition to the above, contracts have been let for 300 large double-truck open cars for delivery in the early spring, and with these added facilities on the surface the company will be fully prepared to meet all requirements for a reliable and ample service.

Experiments have been carried on for the past six months with power-brakes, with a view to preventing accidents so far as possible, and the best brakes are being applied to some of the new cars. As soon as a power-brake has been secured which will do the work

required on surface cars satisfactorily and with certainty, all of the cars of the company will be fully equipped therewith.

677 Contract has been let for a new addition to the present car and repair shop, located on Fifty-third street, between First and Second avenues, in South Brooklyn, and containing 40,000 square feet of floor space. This will be completed during the winter, and, after completion, all of the repair work for the entire service system on car bodies and trucks and all electrical equipment for the entire system, including elevated lines, will be done at this shop. This will mean a large saving in the concentration of the work, and with new modern machinery, that will be installed, which will include the use of electricity and compressed air throughout the shop, will effect a still further saving in comparison with the former system of individual shops with separate foremen, storekeepers, timekeepers, etc.

Your company has on hand at the present time some 4,000 tons of girder rail, and when the track work under way this season is completed the roadbed and track of the entire surface lines of the system will be equal, if not superior, to any electric road in the country.

The matter of overhead trolley and feed wires is also being given particular attention, and the combination of the various roads and the change in the method of feeding the different lines have permitted a large economy to be made in the cost of the power production and will enable the company to dispense entirely with the large power-house of the Nassau road, which will be made use of in furnishing power on the elevated lines.

The company is also building a short section of underground conduit from the main power-house in the eastern district at the foot of Division avenue, and, when completed, all of the overhead wires now on Kent avenue will be placed underground, which will prevent any possible interruption in case of fire or accident to the overhead system, and at the same time relieve the street at this point of a large number of overhead wires.

678 *Electricity or Elevated.*

In regard to the elevated railroad, since the close of the last fiscal year, the entire Fifth Avenue line has been changed over to the third-rail system and is now being operated with a complete electric service, steam trains being used only during the rush hours of morning and evening. Sufficient new 80-lb. steel rail has been ordered to entirely relay the tracks on Lexington avenue and a portion of Broadway, and these lines will be completely rebuilt and the third rail installed in time for operation early this winter. The Fulton Street (Kings County) Elevated line has also had the third rail put in place over about one-third of the structure, and work is also being rapidly pushed forward on this line. The company will have in readiness next winter a sufficient number of motor car equipments

to run a much more frequent service than has ever been given heretofore by steam on the Fifth Avenue and Lexington Avenue branches of the Brooklyn Elevated railroad and the Fulton Street line of the Kings County railroad, and after these lines are in complete electric operation the changing over of the remainder of the system will be continued.

The operation of through electric car service from the suburbs over the elevated lines on a very much more frequent headway will give an improved service that it is expected will add greatly to the popularity of the elevated lines and increase the riding where much quicker service can be given with less liability to accidents.

Benefits of Consolidation.

While the process of actual consolidation and combination so as to attain the best result is necessarily slow, I have no doubt that, when perfected, consolidation will show all the good results which have been predicted for it, and will more than justify the action 679 of the directors in bringing it about. Very few railroad systems present greater opportunities for development and profit. The present growth of Brooklyn is unprecedented. Direct connection with New York over the Brooklyn bridge and the near prospect of new bridges have had a marvelous effect in developing the suburban districts. Farm lands are being rapidly turned into city lots, and prices of suburban land have doubled, and in some cases trebled, within two years. The records of the building department show that the increase over last year in new building operations is over 100 per cent. and the rate of increase is much faster than in the boroughs of Manhattan and the Bronx. The unbuilt portion of Brooklyn is the cheapest part of Greater New York for dwellings, and when the plans of the company have been fully matured it will be nearer the business center of New York in the matter of time than One hundred and tenth street, New York. The prompt and gratifying result which has followed electric reconstruction and operation of the Brighton Beach railroad and the Prospect Park and Coney Island railroad (showing fifty per cent. greater receipts in two months on the Brighton Beach line than were taken in twelve months under steam operation) indicate that the company's earnings will be largely swelled from the new business created on these routes, while the traffic agreements which have been entered into with the Long Island Railroad Company, whereby convenient access is obtained to Rockaway Beach and to Manhattan Beach, are likely to be very beneficial to both the Long Island Railroad Company and the Brooklyn Rapid Transit Company. At no time in your company's history has its condition been so sound or so promising as it is at present.

Appended are detailed financial statements of the various companies included in the Brooklyn rapid transit system.

C. L. ROSSITER, *President.*

Statement of Companies Owned or Controlled, with their Capital Stocks and Bonded Debts.

Brooklyn Rapid Transit Company.

Capital stock authorized	$45,000,000
" " issued June 30, 1899	43,000,000
($2,000,000 to be issued in exchange for all the preferred and common stock of the Kings County Elevated Railroad Company.)	
Bonds 50 year gold, authorized	7,000,000
issued	6,625,000

Interest, 5 per cent., A-O, matures October 1, 1945.

Companies Controlled by Ownership of Stock.

	Cap. stock.	Proportion of stock owned by B. R. T.	Bonds.	Interest.	Matures.
Brooklyn Heights R. R. Co.	$200,000 00	$200,000 00	$250,000	5 p. c. A-O	Apr. 1, 1941
Brooklyn, Queens Co. & Suburban R. R. Co	2,000,000 00	2,000,000 00			
(1) 1st mortgage			(4) 3,500,000	5 " J-J	July 1, 1941
1st consol. mortgage (authorized $4,500,000)			(4) 2,834,000	5 " M-N	July 1, 1941
Jamaica & Brooklyn 1st mortgage			240,000	5 " J-J	Jan. 1, 1930
Sea Beach Railway Co.	650,000 00	650,000 00	650,000	4 " M-S	Sept. 1, 1916
(3) Sea View R. R. Co.	190,752 54	190,752 54	(2) 52,500	6 " J-J	Jan. 1, 1907
Coney Island & Gravesend R. R. Co.	35,400 00	35,400 00	None.		
Nassau Electric R. R. Co.	Pr. 6,500,000 00	6,052,000 00			
	Com. 8,500,000 00	8,499,716 00			
1st mortgage			660,000	5 " A-O	Apr. 1, 1944
1st con. mortgage (authorized $15,000,000)			8,946,960	4 " J-J	Jan. 1, 1951
Atlantic Avenue 1st consol. mortgage			759,000	5 " A-O	Oct. 1, 1909
Atlantic Avenue general consol. mortgage			2,241,000	5 " "	Apr. 1, 1931
Atlantic Avenue improvements			220,000	5 " J-J	Jan. 1, 1934

Brooklyn, Bath & West End R. R. Co., general mortgage			121,040	5 "	A-O	Oct. 1, 1933
(5) Brooklyn, Bath & West End R. R. Co., 1st mortgage, series A			250,000	5 "	J-J	Jan. 1, 1906
(5) Brooklyn, Bath & West End R. R. Co., 1st mortgage, series B			250,000	5 "	A-O	Jan. 1, 1916
(5) Brooklyn, Bath & West End R. R. Co., 2d mortgage			52,000	5 "	J-D	June 1, 1911
(6) Brooklyn Union Elevated R. R. Co	Pr 3,830,160 00	3,536,300 03				
	Com 12,926,700 00	11,976,235 87				
1st mortgage (authorized $16,000,000)			12,890,000	4 "	F-A	Feb. 1, 1950
(7) Kings County Elevated R. R. Co.	Pr 2,800,000 00	2,800,000 00				
	Com 6,000,000 00	6,000,000 00				
1st mortgage (authorized $7,000,000)			5,000,000	4 "	F-A	Aug. 1, 1949
Total	$43,633,012 54	$41,940,404 44	$38,916,500			

(1) $2,000,000 owned by Brooklyn Rapid Transit Company, and constituting a portion of guarantee fund for performance of Brooklyn City Railroad Company lease.
(2) All owned by Brooklyn Rapid Transit Company.
(3) Includes without increase of capitalization the former Brooklyn and Brighton Beach railroad, which was bought free and clear with money furnished by Brooklyn Rapid Transit Company.
(4) Subject to call in 1916.
(5) Subject to call any time before maturity.
(6) Five per cent. after February 1, 1905.
(7) To be turned over to Brooklyn Rapid Transit Company upon completion of reorganization.

Companies Controlled by Lease through Brooklyn Heights Railroad Company for 999 Years.

	Capital stock.	Bonds.	Interest.	Matures.	Rental.
Brooklyn City R. R. Co	$12,000,000				10 per cent. per annum on capital stock and interest on bonds.
(1) First consolidated mortgage		$6,000,000	5 p. c., J-J	July 1, 1941	
N. Williamsburgh & Flatbush R. R		200,000	4½ " F-A	" "	
Greenpoint & Lorimer R. R		125,000	6 " M-N	May 1, 1910	
Brooklyn Crosstown R. R		200,000	5 " J-J	July 1, 1908	
Calvary Cemetery & Greenpoint R. R		200,000	6 " J-D	Jan. 1, 1907	
Grand St. & Newtown R. R		200,000	5 " F-A	July 1, 1906	
Prospect Park & Coney Island R. R. Co New York & Coney Island R. R. Co Prospect Park & South Brooklyn R. R. Co	The railroad properties of these companies leased for 999 years to Brooklyn Heights R. R. Co. for $40,000 per year until 1909, and $45,000 thereafter.				

(1) Subject to call in 1916. $1,627,000 of these owned by Brooklyn Rapid Transit Company.

682 *Balance Sheet, Brooklyn Rapid Transit Company, June* 30, 1899.

(After disposition of surplus of $623,587.35 as authorized by board of directors.)

Assets.

Investments, viz:

Entire capital stock, Brooklyn Heights Railroad Company.
Entire capital stock, Brooklyn, Queens County and Suburban Railroad Company.
Entire capital stock, Sea Beach Railway Company.
Entire capital stock, Sea View Railroad Company.
Entire capital stock, Coney Island and Gravesend Railway Company.
$6,052,000.00 par value preferred stock, Nassau Electric Railroad Company.
$8,499,716.00 par value common stock, Nassau Electric Railroad Company.
$3,536,300.03 par value preferred stock, Brooklyn Union Elevated Railroad Company.
$11,976,235.87 par value common stock, Brooklyn Union Elevated Railroad Company.
$52,500.00 par value first mortgage 6 per cent. bonds, Sea View Railroad Company.
$1,668,589.72 equity in Brighton Beach and Sea View railroad and reconstruction.
$2,000,000.00 par value first mortgage 5 per cent. bonds, Brooklyn, Queens Co. and Suburban R. R. Co.
$1,627,000.00 per value first mortgage 5 per cent. bonds, Brooklyn City Railroad Company.

	$44,400,244 61
Other investments (market value $193,000)	166,898 11
Cash	287,247 69
Bills receivable	100,000 00
Treasury bonds	375,000 00
Equity in Brooklyn City Railroad Company construction account	4,730,476 79
Treasury stock	146,228 00
Total	$50,206,095 20

683 Liabilities.

Capital stock	$43,000,000 00
Bonds	7,000,000 00
Accrued interest and coupons	89,862 50
Accrued taxes	20,931 50
Open accounts	40,759 80
Profit and loss surplus	54,541 40
Total liabilities	$50,206,095 20

Balance Sheet, Brooklyn Heights Railroad Company, June 30, 1899.

Assets.

Cost of road and equipment	$465,397 85
Brooklyn City Railroad construction account	4,764,048 86
Supplies on hand	152,370 93
Due account traffic	5,224 77
Due by companies and individuals	404,208 83
Cash on hand	437,553 88
Prepaid insurance	37,985 04
Bills receivable	38,213 21
	$6,305,003 37

Liabilities.

Capital stock	$200,000 00
B. R. T. Co.'s equity in B. C. R. R. const. account	4,730,476 79
Funded debt	250,000 00
Interest on funded debt, due and accrued	3,642 72
Due companies and individuals	292,058 71
Rentals accrued	613,748 90
Taxes accrued	196,076 25
Mortgage indebtedness	19,000 00
	$6,305,003 37

684 EXHIBIT 38.

Report of the Nassau Electric Railroad Company to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1900.

OFFICE OF THE
STATE BOARD OF TAX COMMISSIONERS,
ALBANY, *October 1st*, 1900.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899.

☞ *It is requested that you complete and forward such report as required by that act on or before December 1st*, 1900.

Very respectfully,
STATE BOARD OF TAX COMMISSIONERS.

Extract from law relating to taxation of special franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to
685 collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, ex-

cept mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

686 SCHEDULE A.

Title of company, Nassau Electric Railroad Co.
General offices at 168 Montague street, Brooklyn, N. Y.
Date of close of fiscal year, June 30.
For information concerning this report address T. S. Williams, vice-president.

Officers of the Company, with Address.

President, C. L. Rossiter.
Vice-president, T. S. Williams.
Secretary, C. D. Meneely.
Treasurer, C. D. Meneely.
General manager, —— ——.

SCHEDULE B.

Description of Special Franchise, Showing Streets, Highways, or Public Places Possessed or Rights Enjoyed and in What Village, Tax District or Districts Same is Located.

NOTE.—If this information was given in 1899 report and map filed, state such fact, given only additional grants since June 30, 1899.

This information was given in 1899 report of Brooklyn Heights Railroad Company, lessee.
This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

SCHEDULE C.

687 *Copy of Special Law, Grant, Ordinance, or Contract or Reference to General Law under which "Special Franchise is Held, Possessed, or Enjoyed and Statement of Any Condition, Obligation, or Burden Imposed upon Such Special Franchise or under which the Same is Enjoyed."*

NOTE.—If this information was given in 1899 report and copies filed state such fact, giving only additional rights since July 30 1899.

This information was given in 1899, report of Brooklyn Heights Railroad Company, lessee.

SCHEDULE D.

Statement of Assets and Liabilities June 30, 1900.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate & improvements	$30,116,650 12	Capital stock	$15,000,000 00
Cost of equipment		Funded debt	15,000,040 00
Stock & bonds of other companies.		Accounts and bills payable	326,171 34
Material and supplies		Int. on funded debt due & accr'd.	
Accounts and bills receivable.	339,071 24	Rentals due and accrued.	
Cash on hand	1,827 70	Dividends unpaid	
Open accounts	254,912 28	Real estate mortgages	198,850 00
Treasury bonds	27,000 00		
Profit and loss		Profit and loss	215,000 00
Total	$30,740,061 34	Total	$30,740,061 34

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	When payable.	Highest.	Lowest.	Present.
Common issued	85,000	$8,500,000 00	None				
Preferred issued	65,000	6,500,000 00					
Total	150,000	$15,000,000 00					

FUNDED DEBT—SCHEDULE F.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
Nassau cons. mortg'e	June 30, 1898	Jan. 1, 1951	$10,447,000 00	4 per cent.	Jan. and July			
Nassau 1st mortg'e	April 1, 1894	April 1, 1944	660,000 00	5 "	Apr. and Oct.			
Atlantic Ave. 1st con	Sept. 50, 1884	Oct. 1, 1909	732,000 00	5 "	Apr. and Oct.			
" " gen'l mortg'e	Ap'l 23, 1891	Ap'l 1, 1931	2,241,000 00	5 "	Apr. and Oct.			
" " impvmt. "	Jan'y 1, 1894	Jan'y 1, 1934	220,000 00	5 "	Jan. and July			
B. B. and W. E. 1st mtge. "A"	Dec. 28, 1886	Jan'y 1, 1907	250,000 00	5 "	Jan. and July			
" " " "B"	" 28, "	Jan'y 1, 1917	250,000 00	5 "	Apr. and Oct.			
" 2nd " "C"	July 1, 1891	June 1, 1911	52,000 00	5 "	Jan. and Dec.			
" gen'l mortg'e	Oct. 2, 1893	Oct. 1, 1933	121,040 00	5 "	Apr. and Oct.			

689 *Statement of Receipts and Disbursements for Year Ending June 30, 1900.*

SCHEDULE G.

See report of Brooklyn Heights Railroad Company, lessee.

Statement of Cost to Reproduce (New) Property in Streets, Highways, etc., Value Less Depreciation and Same Outside, with Assessments in Each Tax District.

* Name of each township and city wherein located and wards in city where different tax rates prevail.	Present value of property in streets, highways and public places on basis of cost of reproduction. (New.)	Present value of property in streets, highways and public places. (Allowing depreciation.)	Present value of property outside streets, highways and public places on basis of cost of reproduction. (New.)	Present value of property outside streets, highways and public places. (Allowing depreciation.)	Assessment of real estate in streets, highways, etc., in 1900.	Assessment of real estate outside streets, highways, etc., in 1900.	Remarks.
Borough of Brooklyn	$1,805,548 85	$956,504 98			$5,136,030 00	$970,860 00	
Total	$1,805,548 85	$956,504 98			$5,136,030 00	$970,860 00	

* Name of each tax district in which assessments are made for real estate.

691 *Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock and All Other Non-taxable Securities Owned.*

SCHEDULE L.

Description.	Amount.
Coney Island and Gravesend Railway Company	$35,400 00
Sea Beach Railway Company	650,000 00
Total	
Value of tangible personal property, material, supplies, cars, etc., see report of Brooklyn Heights Railroad Company, lessee	
Total assessment of personal property	None.
Is there any contest on 1900 personal assessment?	

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.
Brooklyn Heights Railroad Company	$806,775 81

Details of Roads Owned and Leased.

SCHEDULE M.

Coney Island and Gravesend Railway Company and this company and its leased lines leased to Brooklyn Heights Railroad Company.

692 This schedule is applicable only to railroad corporations.

The accompanying blanks are an integral part of this report. A separate blank should be used for *each tax district* (*for each ward in a city where the ward rates differ*). Additional copies will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not contain the proper blanks for the different fields of construction needed to make a satisfactory report other blanks will be furnished on request, covering surface street railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the copartnership making the same.

STATE OF NEW YORK, }
County of Kings, } *ss:*

T. S. Williams, vice-president of the Nassau Electric Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said
693 company and the value thereof at the close of the year ending June 30, 1900, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

[L. S.] (Signed) T. S. WILLIAMS.

Subscribed and sworn to before me, this 28th day of November, 1900.

V. W. WICKES,
Notary Public, Kings County, N. Y.

Form A–5.

Tax district, Brooklyn.

NOTE.—Use one of these forms for each tax district.

Surface street railroads—Animal power, cable conduit, conduit electric, electric overhead, other powers.

Report of the Nassau Electric Railroad Company of Tangible Real Property Located in, upon, under, or above Streets, Highways, and Public Places.

☞Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office *on or before December 1st*, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid or erected prior to June 30, 1900.									Laid or erected June 30 to Nov. 1, 1900.						
Conductors not in subway, exclusive of trolley wire.	Insulated conductors in subway.			Use these columns for overhead and underground conductors.		Third rail system.			Conductors not in subway, exclusive of trolley wire.	Use this column for overhead and underground conductors.	Insulated conductors in subway.			Third rail system.	
Miles.	Miles.	Character of insulation.	Pressure.	Size.	Age.	Miles.	Weight per yard.	Age.	Miles.	Size.	Miles.	Character of insulation.	Pressure.	Miles.	Weight per yard.
210.26	.....	.....	.....	500,000	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
3.3	.....	.....	.....	0000	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Value reproduced (new)..... $432,069 57
Present value (allowing depreciation)..... 345,655 66

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

	Miles erected prior to June 30, 1900.					Poles.			Miles erected June 30 to Nov. 1, 1900.			
	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.	Age.	Average number per mile.	Height.	General description.	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.
Bracket cons. } Wooden poles. }												
Bracket cons. } Iron poles. }		.795	Double	1-0	4 yrs.	55	24′	Tubular iron				
Span wire cons. } Wooden poles. }												
Span wire cons. } Iron poles. }	.34		Double	1-0	4 yrs.	85	24′	Tubular iron				
Span wire cons. } Iron poles. }		53.075	Double	1-0	4 yrs.	85	24′	Tubular iron				
Span wire cons. } Iron poles. }		2.76	Double	2-0	4 yrs.	85	24′	Tubular iron				

Value reproduced (new)	$133,723 00
Present value (allowing depreciation)	96,350 46

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Motive power.	Laid prior to June 30, 1900.							Laid June 30 to Nov. 1, 1900.						
	Miles measured as single track.	Rails.			Ties.		Kind of paving and ballast.	Miles measured as single track.	Rails.		Ties.		Kind of paving and ballast.
		Section.	Weight per yard.	When laid.	Number per mile.	Kind and size.			Section.	Weight per yard.	Number per mile.	Kind and size.	
Electric overhead	94.66	9" girder	90 lbs. / 94 "		2112	Y. P. 6" x 8" x 7' 0"		*1.97	9" girder	94 lbs.	2112	Y. P. 6" x 8" x 7' 0"	Cobble, sand foundation.
Electric overhead	15.61	6" "	70 "		2112	"							
Electric overhead	1.69	Flat	45 "		1350	"							
Electric overhead	1.64	T	56 "		2650	"							

Value reproduced (new) $1,239,756 28
Present value (allowing depreciation) 514,498 86

Give description, dimensions and age of all bridges, culverts and trestles.

* This was laid in reconstruction, and replaced the same amount of 6" girder whose above mileage is reduced from 15.61 to 13.64. The total mileage remaining unchanged.

697 STATE OF NEW YORK, }
County of Kings, } *ss:*

T. S. Williams, vice-president of the Nassau Electric Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

(Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

(S'g'd) V. W WICKES,
Notary Public.

698 EXHIBIT 39.

Report of the Brooklyn, Queens County and Suburban Railroad Company to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1900.

OFFICE OF THE
STATE BOARD OF TAX COMMISSIONERS,
ALBANY, *October 1st*, 1900.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899.

☞ It is requested that you complete and forward such report as required by that act on or before December 1st, 1900.

Very respectfully,
STATE BOARD OF TAX COMMISSIONERS.

Extract from law relating to taxation of special franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures erected upon, under or above, or affixed to the same; all
699 wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under

ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through any street, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance, or electricity for telegraphic, telephonic or other purposes; and trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

700 SCHEDULE A.

Title of company, Brooklyn, Queens County and Suburban Railroad Company.

General offices at No. 168 Montague street, Brooklyn.

Date of close of fiscal year, June 30.

For information concerning this report address T. S. Williams, vice-president.

Officers of the Company, with Address.

President, C. L. Rossiter.
Vice-president, T. S. Williams.
Secretary, C. D. Meneely.
Treasurer, C. D. Meneely.
General manager, —— ——.

SCHEDULE B.

Description of Special Franchise, Showing Streets, Highways, or Public Places Possessed or Rights Enjoyed and in what Village, Tax District or Districts Same is Located.

NOTE.—If this information was given in 1899 report and map filed, state such fact, giving only additional grants since June 30, 1899.

This information was given in 1899 report of Brooklyn Heights Railroad Company, lessee.

This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

SCHEDULE C.

Copy of Special Law, Grant, Ordinance or Contract, or Reference to General Law under which "Special Franchise is Held, Possessed, or Enjoyed, and Statement of any Condition, Obligation, or Burden
701 *Imposed upon Such Special Franchise or under which the Same is Enjoyed."*

NOTE.—If this information was given in 1899 report and copies filed, state such fact, giving only additional rights since June 30, 1899.

This information was given in 1899, report of Brooklyn Heights Railroad Company, lessee.

SCHEDULE D.

Statement of Assets and Liabilities June 30, 1900.

Assets.	Amounts.	Liabilities.	Amount.
Cost of real estate & improvements.	$8,607,562 63	Capital stock	$2,000,000 00
Cost of equipment		Funded debt	6,574,000 00
Stock & bonds of other companies.		Accounts and bills payable.	79,136 76
Material and supplies		Int. on funded debt due & accr'd	
Accounts and bills receivable.		Rentals due and accrued.	
Cash on hand		Dividends unpaid	
Profit and loss....Deficit	45,574 13	Profit and loss	
Total	$8,653,136 76	Total	$8,653,136 76

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	When payable.	Highest.	Lowest.	Present.
Common issued	20,000	$2,000,000 00	None.				
Preferred issued							
Total							

FUNDED DEBT—SCHEDULE F.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
1st mortgage	Jan'y 16, 1894	July 1, 1941	$3,500,000 00	5 per cent.	Jan. and July			
1st cons. mortgage	" 16, "	" 1, "	2,834,000 00	5 "	May and Nov.			
Jamaica & B'klyn 1st mortgage	Sept. 4, 1889	Jan'y 1, 1930	240,000 00	5 "	Jan. and July			

703 *Statement of Receipts and Disbursements for Year Ending June 30, 1900.*

SCHEDULE G.

See report of Brooklyn Heights Railroad Company, lessee.

704

SCHEDULE K.

Statement of Cost to Reproduce (New) Property in Streets, Highways, etc., Value Less Depreciation and Some Outside, with Assessments in Each Tax District.

* Name of each township and city wherein located and wards in city where different tax rates prevail.	Present value of property in streets, highways, and public places on basis of cost of reproduction. (New.)	Present value of property in streets, highways and public places. (Allowing depreciation.)	Present value of property outside streets, highways and public places on basis of cost of reproduction. (New.)	Present value of property outside streets, highways and public places. (Allowing depreciation.)	Assessment of real estate in streets, highways, etc., in 1900.	Assessment of real estate outside streets, highways, etc., in 1900.	Remarks.
Borough of Brooklyn	$408,301 85	$189,063 63	.....	.....	$1,932,603 00	$253,800 00	.....
Borough of Queens	105,574 05	76,272 28	.....	.....	.....	147,200 00	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
Total	$513,875 90	$265,335 91	.....	.....	$1,932,603 00	$401,000 00	.....

* Name of each district in which assessments are made for real estate.

705 *Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock and All Other Non-taxable Securities Owned.*

SCHEDULE L.

Description.	Amount.
None	
Total	
Value of tangible personal property, material, supplies, cars, etc. See report of Brooklyn Heights Railroad Company lessee	
Total assessment of personal property	None.
Is there any contest on 1900 personal assessment	

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.
Brooklyn Heights Railroad Company	$328,699 99

SCHEDULE M.

Details of Roads Owned and Leased.

This company is leased to the Brooklyn Heights Railroad Company.

706 This schedule is applicable only to railroad corporations The accompanying blanks are an integral part of this report. A separate blank should be used for *each tax district (for each ward in a city where the ward rates differ)*. Additional copies will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not contain the proper blanks for the different fields of construction needed to make a satisfactory report other blanks will be furnished on request, covering surface street railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK, }
County of Kings, } ss.:

T. S. Williams, vice-president of the Brooklyn, Queens County and Suburban Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof

707 at the close of the year ending June 30, 1900, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

[L. S.] (Signed) T. S. WILLIAMS.

Subscribed and sworn to before me, this 28th day of November, 1900.

V. W. WICKES,
Notary Public, Kings County, N. Y.

Tax district, Brooklyn.

NOTE.—Use one of these forms for each tax district.

Surface street railroads—Animal power, cable conduit, conduit electric, electric overhead, other powers.

Report of the Brooklyn, Queens County and Suburban Railroad Company of Tangible Real Property Located in, upon, under, or above Streets, Highways, and Public Places.

☞ Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office *on or before December 1st*, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid or erected prior to June 30, 1900.									Laid or erected June 30 to Nov. 1, 1900.						
Conductors not in subway, exclusive of trolley wire.	Insulated conductors in subway.			Use these columns for overhead and underground conductors.		Third rail system.			Conductors not in subway, exclusive of trolley wire.	Use this column for overhead and underground conductors.	Insulated conductors in subway.			Third rail system.	
Miles.	Miles.	Character of insulation.	Pressure.	Size.	Age.	Miles.	Weight per yard.	Age.	Miles.	Size.	Miles.	Character of insulation.	Pressure.	Miles.	Weight per yard.
31.42	.....	.....	.....	500,000	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1.15	.....	.....	.....	0000	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Value reproduced (new)..... $70,755 27
Present value (allowing depreciation)..... 56,604 22

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

	Miles erected prior to June 30, 1900.				Poles.			Miles erected June 30 to Nov. 1, 1900.			
	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.	Age.	Average number per mile.	Height.	General description.	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.
Bracket cons. . . . Wooden poles. . . .												
Bracket cons. . . . . Iron poles												
Span wire cons. . . . Wooden poles												
Span wire cons. . . . Iron poles		10.135	Double . .	1—0	4 yrs.	85	24′	Tubular iron				
Span wire cons . . . Iron poles		4.300	Double . .	2—0	4 yrs.	85	24′	Tubular iron.				

Value reproduced (new)	$30,674 00
Present value (allowing depreciation)	21,985 28

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Motive power.	Laid prior to June 30, 1900.							Laid June 30 to Nov. 1, 1900.					
	Miles measured as single track.	Rails.			Ties.		Kind of paving and ballast.	Miles measured as single track.	Rails.		Ties.		Kind of paving and ballast.
		Section.	Weight per yard.	When laid.	Number per mile.	Kind and size.			Section.	Weight per yard.	Number per mile.	Kind and size.	
Electric overhead.	28.87	9" girder.	90 lbs. 94 "	}	2112	Y. P. 6" x 8" x 7' 0"	}	.....	.....	....	.....	....	....

Value reproduced (new)	$306,872 58
Present value (allowing depreciation).....	110,474 13

Give description, dimensions and age of all bridges, culverts and trestles.

711 STATE OF NEW YORK, } ss:
County of Kings, }

T. S. Williams, vice-president of the Brooklyn, Queens County and Suburban Railroad Company being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

(Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

(S'g'd) V. W. WICKES,
Notary Public.

Tax district, Queens.

NOTE.—Use one of these forms for each tax district.

Surface street railroads—Animal power, cable conduit, conduit electric, electric overhead, other powers.

Report of the Brooklyn, Queens County and Suburban Railroad Company of Tangible Real Property Located in, upon, under or above Streets, Highways, and Public Places.

☞ Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office *on or before December 1st*, 1900.

Yours very truly,
STATE BOARD OF TAX COMMISSIONERS.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid or erected prior to June 30, 1900.									Laid or erected June 30 to Nov. 1, 1900.						
Conductors not in subway, exclusive of trolley wire.	Insulated conductors in subway.			Use these columns for overhead and underground conductors.		Third rail system.			Conductors not in subway, exclusive of trolley wire.	Use this column for overhead and underground conductors.	Insulated conductors in subway.			Third rail system.	
Miles.	Miles.	Character of insulation.	Pressure.	Size.	Age.	Miles.	Weight per yard.	Age.	Miles.	Size.	Miles.	Character of insulation.	Pressure.	Miles.	Weight per yard.
11.19	.....	.....	.....	c. m. 500.000	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
9.91	.....	.....	.....	0000	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Value reproduced (new)..... $44,220 91
Present value (allowing depreciation)..... 35,376 75

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

	Miles erected prior to June 30, 1900.					Poles.			Miles erected June 30 to Nov. 1, 1900.			
	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.	Age.	Average number per mile.	Height.	General description.	Single track.	Double track	Single or double trolley wire.	Size of trolley wire.
Bracket cons ..... } Wooden poles. .. }												
Bracket cons..... } Iron poles ..... }												
Span wire cons.... } Wooden poles.... }												
Span wire cons ... } Iron poles..... }		2.795	Double ..	1-0	4 yrs.	85	24′	Tubular iron.				

Value reproduced (new).....	$6,708 00
Present value (allowing depreciation) ...	4,829 76

Track, Surface Street Railroad.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Motive power.	Laid prior to June 30, 1900.							Laid June 30 to Nov. 1, 1900.					
	Miles measured as single track.	Rails.			Ties.		Kind of paving and ballast.	Miles measured as single track.	Rails.		Ties.		Kind of paving and ballast.
		Section.	Weight per yard.	When laid.	Number per mile.	Kind and size.			Section.	Weight per yard.	Number per mile.	Kind and size.	
Electric overhead.	5.59	9″ girder.	90 lbs. / 94 lbs.	....	2112	Y. P. 6″ x 8″ x 7′ 0″.	.....	.....	.....	.....	.....	.....	.....

Value reproduced (new)..... $54,645 14
Present value (allowing depreciation)..... 36,065 79

Give description, dimensions, and age of all bridges, culverts, and trestles.

715 STATE OF NEW YORK, } ss.:
County of Kings, }

T. S. Williams, vice-president of the Brooklyn, Queens County and Suburban Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

(Signed) T. S. WILLIAMS.

Subscribed and sworn to before me this 28th day of November, 1900.

(S'g'd) V. W. WICKES,
Notary Public.

715*a* Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Brooklyn City Railroad Company
against
THE STATE BOARD OF TAX COMMISSIONERS. } Assessment of 1900. No. 32.

To the supreme court:

I, the undersigned, Robert Earl, heretofore duly appointed referee to take and report to this court such evidence upon the several issues of fact raised by the petition, writ and return herein, as may be adduced before me by the parties hereto, with my findings of fact and conclusions of law, do hereby respectfully report:

That, in pursuance of said order, before me duly appeared the said relator, The Brooklyn City Railroad Company, by Sheehan & Collin, its attorneys, and Hon. David B. Hill, of counsel, and the defendants, The State Board of Tax Commissioners, by Attorney-General John C. Davies and by Deputy Attorneys-General Louis T. Martin and H. B. Coman, and by Hon. J. Newton Fiero, of counsel, and the evidence adduced before me upon the said several
715*b* issues of fact by the parties hereto is hereto annexed and forms a part of this report.

After hearing the said evidence and the arguments of counsel for the respective parties hereto, I make and report the following findings of fact and conclusions of law:

Findings of Fact.

I. The relator, The Brooklyn City Railroad Company, was duly incorporated December 17, 1853, under and in pursuance of the general law of the State of New York known as chapter 140 of the Laws of 1850, and then became and ever since has been a domestic street surface railroad corporation, and its principal office has been and still is located in the former city of Brooklyn, being the present borough of Brooklyn in the city of New York.

II. From and before the year 1850, and until January 1, 1897, the city of Brooklyn was a duly incorporated city of said State, and on January 1, 1898, became and since has been the borough of Brooklyn, in the county of Kings, and a part of the city of New York, under and in pursuance of the Greater New York charter.

III. By resolution of the common council of the city of Brooklyn, duly adopted December 22, 1853, a copy of which is set forth in full in the evidence hereto annexed, marked "Exhibit 21c" (pp. 424–32), the consent of the common council of the city of Brooklyn was duly given to the relator for the construction, maintenance and operation of a street surface railroad upon certain terms and conditions, in said resolutions expressed, upon and through the streets of said city therein mentioned.

By chapter 77 of the Laws of 1854, a copy of which is also
715c set forth in full in said Exhibit 21c (pp. 433–34), the relator was authorized to construct and operate its railroad over th several routes mentioned in its articles of association and to continue the same from the termination thereof respectively into or through any town in the county of Kings, over, across or upon any road or highway therein, upon the terms and conditions in said act set forth.

IV. Thereafter, and at various times between December 17, 1853, and the year 1897, the relator, by consolidation, merger, purchase or otherwise, acquired and became the owner of the property, rights, privileges and franchises of certain other street surface railroad corporations as follows:

Grand Street and Newtown Railroad Company;
Greenpoint and Williamsburg Railroad Company;
Nassau Railroad Company;
Brooklyn City, Hunters Point and Prospect Park Railroad Company;
Brooklyn Crosstown Railroad Company;
Williamsburg and Flatbush Railroad Company;
New Williamsburg and Flatbush Railroad Company;
Bushwick Railroad Company;
Greenpoint and Lorimer Street Railroad Company;
Calvary Cemetery, Greenpoint and Brooklyn Railroad Company;
South Brooklyn Street Railroad Company.

Also, by assignment, the relator, in the year 1896, acquired certain

of the franchises of the Brooklyn, Bergen Beach and Canarsie Railroad Company.

V. The special franchises of the Brooklyn City Railroad Company, as constituted and constructed on the second Monday of January, 1900, consisted of forty-five different franchises granted to thirteen different companies or individuals in the boroughs of Brooklyn and Queens. The several streets, avenues and public places on
715*d* which said special franchises have been so constructed are set forth and described on the maps offered and received in evidence, marked "Exhibits B 1 to B 10," inclusive, and also in the evidence hereto annexed. Of these forty-five different special franchises the following could not be operated profitably as separate and independent roads:

The special franchise formerly of the South Brooklyn Street Railroad Company on Second avenue, between Thirty-ninth and Sixtieth streets, with a spur running from Second avenue to Third avenue on Fifty-second street, and a spur on Thirty-ninth street from Second avenue to Third avenue, as shown by map No. B 9.

The two special franchises formerly of the Calvary Cemetery, Greenpoint and Brooklyn Railroad Company, as shown by map No. B 8.

The special franchises formerly of the Greenpoint and Lorimer Street Railroad Company, as shown by map No. B 7.

The special franchises formerly of the Bushwick Railroad Company, as shown by map No. B 6.

The special franchises formerly of the New Williamsburg and Flatbush Railroad Company, as shown by map No. B 5.

The special franchises of the Brooklyn Crosstown Railroad Company, as shown by map No. B 4.

Four out of the five special franchises of the Grand Street and Newtown Railroad Company, as shown by map No. B 3.

VI. The terms and conditions upon which the right, privilege and franchise of constructing, maintaining and operating each of the street surface railroads contained in each such special fran-
715*e* chise, so far as the same are described and set forth in the evidence hereto annexed, and in the exhibits annexed thereto, are correctly set forth and described therein.

VII. Certain of the special franchises now owned by the relator which were formerly owned by other corporations were, while so owned by such other corporations, encumbered by mortgages to secure the payment of the bonds of such other corporations then owning such franchises to the total principal amount of $925,000, which are still unpaid and outstanding. The special franchises of the relator are encumbered by mortgages to secure bonds issued by it of the total principal amount of $6,000,000, which are unpaid and outstanding. The value of the tangible property included in all the special franchises of the relator located in the borough of Brooklyn on the second Monday of January, 1900, was $1,745,888.

The value of the tangible property included in all the special franchises of the relator located in the borough of Queens on the second Monday of January, 1900, was $329,112.

VIII. The charter of the city of Brooklyn was amended by an act of the legislature of the State of New York, known as chapter 564 of the Laws of 1880, which provided that the common council of said city should fix an annual license fee, not exceeding the sum of twenty dollars, for each street or horse car daily operated and used in said city; that every railroad company operating or using such cars should, on or before the 1st day of June in each year, certify to the city clerk the average number of cars daily operated and used by said company, and that every such railroad company should, on or before the 1st day of July in each year, pay to the treasurer of said city the license fee so established for the average number of cars so operated and used by said company; and that said
715*f* license fees should be taken in full satisfaction for the use of the streets or avenues, but the same should not relieve said company from any obligations required by law to keep such streets or avenues, or any part thereof, in repair.

Thereafter, and on or about December 27, 1880, in pursuance of said act of the legislature, the common council of the city of Brooklyn adopted an ordinance providing that licenses should be granted by the mayor from time to time to owners of railroad cars, and that there should be charged and paid to the city treasurer for the use of the city on issuing such licenses by the parties to whom they should be granted for each railroad car, large or small, on horse railroad or steam railroad, twenty dollars.

The said ordinance thereafter continued in force as an ordinance of the city of Brooklyn until the incorporation of the city of Brooklyn in the city of New York on January 1, 1898, and has since continued in force in the borough of Brooklyn by virtue of the provisions of the Greater New York charter.

In pursuance of said act of the legislature and of the said ordinance, the city of Brooklyn issued and delivered annually to the relator an instrument in writing, signed by the mayor and attested by the clerk, under the corporate seal of said city, declaring that in pursuance of an ordinance of the common council the said city thereby licensed and appointed the Brooklyn City Railroad Company to run cars on the route known as the Brooklyn City route, in the streets of the city of Brooklyn, under the provisions of the contract of said company with said city; said company obeying such rules and ordinances of the common council of said city as should from time to time be made for regulating the duties of such appointment. The relator, in pursuance of said acts of the legislature and of the said ordinance, annually paid to the city
715*g* treasurer of the city of Brooklyn until January 1, 1898, and thereafter to the chamberlain of the city of New York, twenty dollars per car for the average number of cars operated and used by the relator in the former city and present borough of Brooklyn.

The provisions of the said act of the legislature were re-enacted without substantial change by an act of the legislature known as chapter 583 of the Laws of 1888, being the revised charter of the

city of Brooklyn, and substantially the same provisions were again re-enacted by an act of the legislature of the said State known as the Greater New York charter, being chapter 378 of the Laws of 1897, taking effect January 1, 1898, and were again re-enacted by an act of the legislature of the State of New York known as the revised Greater New York charter, being chapter 466 of the Laws of 1901, taking effect January 1, 1902. Copies of said acts of the legislature and of said ordinance and of various proceedings in relation to said ordinance are set out in the evidence hereto annexed and marked "Exhibit 3 H" (pp. 324–333).

IX. That the relator has filed with the State Board of Tax Commissioners all reports required by law or required to be filed by said commissioners. Copies of such reports are in evidence and reference is made thereto for their contents.

X. That thereafter, and on or about the 20th day of March, 1900, the State Board of Tax Commissioners, claiming to act under and pursuant to chapter 712 of the Laws of 1899, proceeded to fix and determine the valuation of the special franchises of the relator company in the borough of Brooklyn at the sum of $10,559,900, and in the borough of Queens at the sum of $950,500, and did thereupon make the assessments of such special franchises at the sums aforesaid.

715*h* XI. That immediately after making the assessment the State board gave to the relator company a notice in writing stating in substance that such assessment had been made, and that the total valuation of the relator's special franchise in the borough of Brooklyn was $10,559,900, and in the borough of Queens was $950,500, and that the State board would meet at its office in the city of Albany on the 10th day of April, 1900, at 10 o'clock a. m., to hear and determine any complaints concerning such assessments.

XII. That the relator company, by its counsel, appeared, pursuant to such notice, at the time and place therein stated, before the State board and requested to be informed by the board concerning and as to what was the amount which said board had determined to be the valuation of the tangible property of the relator company, and as to what was the amount fixed and determined by the board to be the valuation of the intangible franchises, rights and permissions of the relator company; and as to what was the method, rule or principle, if any, adopted and applied in ascertaining and determining the valuation; but the board refused to give the relator company the whole or any part of the information so requested.

XIII. That the relator company thereupon complained of the assessment, and filed with the State board a written statement under oath specifying the grounds of its complaint.

XIV. That thereafter, and on or about the 30th day of April, 1900, the State Board of Tax Commissioners, still claiming to act pursuant to chapter 712 of the Laws of 1899, finally determined the valuation of the special franchise of the relator company in the borough of Brooklyn to be the sum of $7,608,184, and in the borough of

Queens to be the sum of $1,879,445, and on or about April 30,
715*i* 1900, filed with the department of taxes and assessments in the city of New York a written statement of such valuation as finally fixed and determined by the State board, and at or about the same time gave notice to the relator company that such written statement had been filed with the department of taxes and assessments of the city of New York.

XV. Thereafter the commissioners of taxes and assessments of the city of New York prepared the assessment-rolls of the real and personal property of the several parts of the city for the year 1900, and entered on such assessment-rolls for the borough of Brooklyn before the final review or certification of such rolls by them, the valuation of the special franchises of the relator in the borough of Brooklyn at the total amount so fixed by the State board as the value of all the special franchises of the relator in both the boroughs of Brooklyn and Queens, to wit, at the sum of $9,187,629, and made no other entry whatever on said assessment-rolls of said city of the valuation of the special franchises of the relator in the borough of Queens, and having annexed thereto their certificate that such assessment-rolls were correct in accordance with the entries of the several books or records in that department, duly verified the same and delivered such assessment-rolls to the municipal assembly of New York city, as required by law on the first Monday of July, 1900.

XVI. That within fifteen days after the final completion and filing of the assessment-roll in the city of New York, the relator company applied for and obtained a writ of certiorari to review the assessment, pursuant to which writ this proceeding is pending.

XVII. The State board did not make a separate valuation or assessment of each special franchise or of each franchise, right, privilege or permission owned by the relator, but made one valuation or assessment of all the special franchises of the relator in the
715*j* streets of the city of New York in the borough of Brooklyn, and valued all of such special franchises owned by the relator in the borough of Brooklyn on the second Monday of January 1900, at the aggregate sum of $7,608,184, and made one valuation or assessment of all the special franchises of the relator in the borough of Queens, and valued all of such special franchises owned by the relator in the borough of Queens on the second Monday of January, 1900, at the aggregate sum of $1,879,445.

XVIII. The special franchises owned by the relator, and so assessed in the borough of Brooklyn, did not, in fact, all adjoin each other, and were not, in fact, all physically united and did not in every instance furnish a continuous route of travel, and the same is true of the special franchises owned by the relator and so assessed in the borough of Queens.

XIX. That in making such assessment in each of said boroughs against the relator, the State board fixed upon a certain figure as covering the value of the tangible and intangible property together,

and did not separately arrive at a valuation of the tangible and intangible parts respectively.

XX. That the tangible property of the relator company, the value of which was included in the assessment so made by the State board, had for many years previous to such assessment been entirely assessed by the local assessors in the city of New York.

XXI. That the defendants valued the property of the relator at what they deemed its full and fair value, taking into consideration the original report made by it to the board, subsequent supplemental or special reports, the report of the State railroad commissioners, the records of the State comptroller's office, the reports of the New York city department of assessment and taxes, and after considera-
715*k* tion of information from experts retained by the board and of their confidential appraisers and special agents, and they also had before them the *Poor's Manual* and *Financial Chronicle*, and considered all of the elements, factors and considerations which they were enabled to gather from these sources. They based their valuation of the tangible property solely upon the cost of reproduction, with an allowance for depreciation.

Defendants considered, among other things, in arriving at their valuation of relator's property, the fact that it had the right, acquired from other companies, to operate other lines of street surface railroad, and that it operated such other lines; that the franchises of the relator were more or less valuable by reason of the acquisition of such right; whether the relator had contracts with another company to run over its lines; the fact of its having control and operation of leased lines.

They had before them and considered a map showing the entire system of the Brooklyn Rapid Transit Company. They considered the market value of its stocks and bonds for what it might be worth and not as conclusive, or as an absolute measure of valuation. They considered the earning power of the property of the company as reported to them by it. They considered the tax rate in Kings county, also net and gross earnings, the character of the motive power used, the amount of percentage tax or license fee paid to the city. They also considered the value of real estate off the line of the road; the fact whether earnings were large or small, and assessed the special franchise at what the members of the board agreed was the full and fair value thereof.

That in addition to these facts which were before the commissioners previous to the hearing of relator, the commissioners had upon, and after said hearing, before them and considered the
715*l* statements, evidence, affidavits and arguments upon such hearing for the purpose of arriving at their final conclusion as to the valuation of the special franchises of relator.

That in assessing the special franchise of the relator, and in arriving at the valuation thereof, the defendants did not include in such assessment the valuation of any property except such as is in, above, upon, under and running through the public streets and public places of said city, including the franchises, rights, authority or per-

mission to construct, operate and maintain its foundation, roadbed, substructure, superstructure, with their appliances in, upon, above, under or through said streets and public places. They did not include in such assessment or valuation the value of the right to be, or the franchise to be a corporation. They did not include the value of the good will of the business carried on by such corporation, nor did they include the value of any property other than that above stated and described as having been included by them. That such assessment as made of such special franchise of the relator includes the value of the tangible and intangible property in the streets of the city of New York, and was arrived at upon consideration of all the facts and circumstances affecting the value of such property, including the use or right to use such streets and public places which the defendants were able to ascertain.

XXII. The actual and true value of all the special franchises of the relator in the borough of Brooklyn as finally determined by the defendants, and as I find, is $7,608,184.

The actual and true value of all the special franchises of the relator in the borough of Queens as finally determined by the defendants, and as I find, is $1,879,445.

XXIII. Other real estate in the city of New York was assessed at only 67 per cent. of its actual and true value, and, therefore,
715*m* to equalize the said assessments of the relator with the assessments of other real estate there should be deducted from the assessment of $7,608,184 in the borough of Brooklyn the sum of $2,510,700.72, and there remains the sum of $5,097,483.28, as the value of all the special franchises of the relator in the borough of Brooklyn for the purposes of assessment and taxation under the special franchise tax act; and there should be deducted from the assessment of $1,879,445 in the borough of Queens the sum of $620,216.85, and there remains the sum of $1,259,228.15 as the value of the special franchises of the relator in the borough of Queens for the purposes of assessment and taxation under the special franchise tax act.

XXIV. That the following is a correct statement of the assessed value of real estate in the State and in the city of New York, respectively, for the years hereinafter stated:

Total assessed real estate in State for 1899.....	$4,811,593,059
Total assessed real estate in State for 1900	5,093,025,771
Total assessed value all special franchises in State for 1900.....	266,202,759
Total assessed value of tangible property for year 1899 included in the special franchises assessed in 1900 for whole State.....	96,061,902

Total assessed value of real estate in New York city, by boroughs, for 1899.

Manhattan and Bronx	$2,178,605,905
Kings	609,822,267
Queens	103,752,600
Richmond	40,264,692
Total	$2,932,445,464

715*n* Total assessed value of all real estate in the city of New York, exclusive of tangible property included in the special franchise, by boroughs, for the year 1900.

Manhattan and Bronx	$2,369,997,504
Kings	651,383,900
Queens	104,427,872
Richmond	42,723,924
Total	$3,168,533,200

Total assessed value of all special franchises in the city of New York, by boroughs, for the year 1900.

Manhattan	$166,763,669
Bronx	7,272,249
Brooklyn	36,743,057
Queens	6,544,312
Richmond	2,356,064
Total	$219,679,351

Total assessed value of the tangible property for the year 1899 included in the special franchises assessed in 1900 for the city of New York, by boroughs.

Bronx	$3,768,600
Brooklyn	18,048,775
Manhattan	50,428,750
Queens	2,935,600
Richmond	1,403,500
Total	$76,585,225

715*o* *Conclusions of Law.*

I. That chapter 712 of the Laws of 1899 is a valid and constitutional enactment, practicable and operative, and that it gave authority to the defendants to assess the relator's special franchise for the purposes of assessment and taxation.

II. That the relator had a hearing and due process of law before the defendants upon the review of their assessment on the tenth day of April, 1900, and was not there deprived of any of its legal or constitutional rights.

III. That the said assessments of the special franchises of the relator in the boroughs of Brooklyn and Queens, respectively, as made by the State board should be confirmed if they had been properly entered by the commissioners of taxes and assessments of the city of New York upon the assessment-rolls of the real and personal property of the several parts of said city for the year 1900, but that by reason of the entry upon the assessment-rolls of said city for the borough of Brooklyn of both said assessments made by the State board for the boroughs of Brooklyn and Queens, the said assessment-roll for the borough of Brooklyn should be corrected by reducing the assessment of the special franchise of the relator from the sum of $9,487,629, being the total amount of the assessments of the special franchises of the relator in both boroughs of Brooklyn and Queens, as made by the State board, to the sum of $7,608,184, being the amount of the assessment of the special franchises of the relator in the borough of Brooklyn, as made by the State board, and to equalize such assessment with the assessment of other real property in the city of New York the relator is entitled to a further deduction of the sum of $2,510,700.72, and that the assessment as thus reduced,

715*p* to wit, the sum of $5,097,483.28, must be taken as the value of the relator's special franchises in the borough of Brooklyn for the purpose of assessment and taxation under the act above referred to, and that the necessary corrections should be made to that end in the assessment-roll and tax books in the city of New York for the borough of Brooklyn.

ROBERT EARL, *Referee.*

715q Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Brooklyn City Railroad Company *against* STATE BOARD OF TAX COMMISSIONERS. } Assessment of 1900. No. 32.

Findings of Fact and Conclusions of Law Requested by the Relator and Refused by the Referee.

Findings of fact so requested and refused.

I. In fixing and determining the valuation of the special franchises of the relator no rule, method or principle was followed or adopted by the State board.

II. The State Board of Tax Commissioners was unable to and did not devise or find any general rule, method or principle to adopt in making the various valuations and assessments of the special franchises of the relator, and was unable to and did not apply any special rule, method or principle whatsoever in
715r making any of said assessments or valuations in any particular case.

III. In valuing the special franchises of the relator the State board considered the market value of the share stock of the relator and the market value of the bonds of the relator as appreciating factors which entered into such valuation.

IV. In valuing the special franchises owned by the relator for the purpose of assessment, as aforesaid, the State board considered the amounts of the gross and net earnings derived from the operation of the system of street railways of the relator constituting its special franchises as appreciating factors entering into their valuation.

V. In valuing the special franchises owned by the relator for the purpose of assessment, as aforesaid, the State board considered the value of all the assets of the relator as an appreciating factor entering into their valuation.

VI. In valuing the special franchises of the relator, as aforesaid, the State board considered the value of the corporate assets of the company and of its good-will as appreciating factors entering into their valuation, and for that purpose fixed upon a certain sum as representing the value of the corporate assets of the company, including its good will.

VII. In valuing the special franchises owned by the relator for the purpose of assessment, as aforesaid, the State board considered as appreciating factors entering into their valuation the rights of the relator to operate cars over the lines owned by other corporations, which lines are operated as a part of the same system, the earning capacity of the corporation and its business methods, in-

cluding the right to operate its cars over continuous routes owned by other companies and the transfer of passengers from one route to another for a single fare, and the operation of the system
715*s* as a whole, including the value of the business skill and personal management of such railroad system.

VIII. No basis for the determination of the value of the relator's special franchises is afforded by any of the following matters which were taken into consideration by the State board in valuing the special franchises of the relator, to wit, the market value of the relator's share stock; of its bonds; of the bonds issued by the several corporations which were consolidated or merged into or with the relator; the amounts of its gross and net earnings derived from the operation of the system of railways of the relator; the value of all the corporate or other assets of the relator; the value of the relator's good will; of its right to operate cars over lines owned by other corporations; of its earning capacity and the business methods and skill of the managers of the relator's property; its right to operate its cars over continuous routes owned by other corporations and over their special franchises which it leased or controlled; the right which the relator possessed to transfer passengers from one line or route of operation to another for a single fare; the right which the relator possessed to create and operate continuous routes of travel by the union of special franchises, some of which is leased and others — which it controlled; the productive capacities of the system were the operation of the relator's system of railroads as a whole.

IX. It is impossible to ascertain what part of the market value of the share stock and bonds of the relator represents the value of the property other than special franchises.

X. There was no testimony or data before the State board which enabled it to determine what portion of the relator's gross earnings comes from the transportation of passengers over the special franchises owned by the relator and what portion thereof comes from other property owned by the relator, and it is impossible
715*t* to ascertain and determine what portion of such gross earnings comes from such several sources respectively.

XI. The consideration of gross receipts by this board as an element of value involves the including in their valuation of the personal elements of ability, business ingenuity, enterprise, management and financial connection.

XII. The consideration of each matter or circumstance as an appreciating factor in the State board's valuation of the special franchises of the relator other than the value of each special franchise as a separate and distinct entity, made the valuation of the special franchises of the relator by the State board very much larger than it otherwise would have been.

XIII. The value of all the special franchises of the relator is materially and very much less than the sum at which such special franchises were assessed by the State board.

XIV. The special franchises of the relator have no ascertainable

value beyond the value of the tangible property included in such special franchises, and the intangible property included in such special franchises is by its very nature incapable of valuation.

XV. The fee of the said streets on which the railroads of the relator are constructed is owned by private persons, to wit, the owners of the land at the time said streets were opened, or their grantees, successors or assigns.

XVI. The State board did not fix and determine said valuation of the special franchise of the relator by estimating the value of such special franchise separately and by itself.

The State board in assessing the special franchise of the relator took into consideration the value of all the property, rights,
715*a* privileges and franchises, including good will of the relator, but without assuming or undertaking to fix and determine, and without fixing and determining the value of all the relator's property, rights, privileges and franchises, including good will, and for that purpose took into consideration the value of the tangible property included in the special franchise of the relator; the market value of the bonds and shares of stock issued by the relator, the annual amount of the gross and net earnings, income and receipts of the relator from all sources; the value of its choses in action and all indebtedness to the relator; its good will, its franchise to be a corporation, its franchise to continue to act in a corporate capacity from year to year; the fact of the leasing and operation by the relator of the railroads of other railroad corporations, the fact that passengers were transferred with and without extra fare from the railroad owned and operated by the relator to other railroads leased and operated by the relator.

The State board did not fix and determine a valuation of any of the separate items of the property, rights, privileges and franchises, including good will, which were taken into consideration by the State board as aforesaid, but all of the said items of property, rights privileges and franchises, including good will, were so taken into consideration as appreciating factors contributing to the total value so taken into consideration of all the property, rights, privileges and franchises, including good will of the relator.

The State board having thus taken into consideration the total value of all the property, rights, privileges and franchises, including good will of the relator, assumed and undertook to make allowances by way of deduction from such total value so taken into consideration for the good will of the relator; for the tangible property of the relator not included in its special franchises; for the value of its choses in action, and of the indebtedness to the relator,
715*c* and for its franchise to be a corporation; but without fixing and determining the value of any of said items of good will, property rights, privileges and franchises so taken into consideration by way of deduction. The State board did not assume or undertake to make allowances by way of deduction and did not make allowance by way of deduction, for the franchise of the relator to continue from year to year to act in a corporate capacity; for its

franchises to consolidate and merge with other corporations; for its franchises and contracts with other railroad corporations for the use by each of the railroads of the other, including the right acquired thereby to transfer and carry passengers without extra fare over and to and from the railroads leased and operated by it; nor for the right as against the owner of the fee of the street to construct, maintain and operate its railroads; and the State board thereupon assumed to make the said assessment of the special franchise of the relator as the result of the process of the aggregations and deductions aforesaid. By such process the State board included in its said assessed valuation of the special franchise of the relator the value of the other items of property, rights, privileges and franchises which, as aforesaid, were not taken into consideration by way of deduction; and the said assessed valuation of the special franchise of the relator included a valuation of the said items of property, rights, privileges and franchises not constituting a part of the special franchise of the relator, for which no allowance or deduction was made as aforesaid.

XVII. It is impossible to estimate even approximately what proportion of the market value of the shares of stock and of the bonds issued by the relator represents the value of the special franchise of the relator, and what proportion thereof represents the value of its other property and other franchises.

XVIII. The ordinance of the common council of the city of Brooklyn adopted on or about December 27, 1880, providing
715*w* that licenses should be granted to street surface railroad companies on payment of a license fee of $20 was authorized by the legislature and adopted by the said common council with the intent on the part of the legislature and of the common council, and for the purpose of increasing the revenues of said city, and not with the intent or for the purpose of providing for expenses of supervision, inspection or other care in the nature of police protection, and the amounts so paid by the relator in pursuance thereof were intended to be and were in fact taxes.

XIX. Each franchise, right or permission to construct, maintain and operate a street railroad in, along or upon any streets, together with the tangible property constructed, maintained and operated in pursuance of such franchise, right, or permission, and which on the second Monday of January, 1900, was operated by the relator, constituted a separate and distinct special franchise.

XX. Each of the street surface railroad corporations which were consolidated or merged with relator or whose property, rights, privileges and franchises were purchased or otherwise acquired by the relator, owned at least one such special franchise prior to such consolidation, merger, purchase or acquisition.

XXI. The total of the values of all of such special franchises of the relator, if each such special franchise should be valued as a separate and independent special franchise, is very much less than the value of all of such special franchises considered as a unit and as owned by a corporation having the right to operate all of such special

franchises as one single railroad system, and the value thereof as one railroad system, is due very largely to the franchises to be a corporation, to continue as a corporation, to construct, maintain and operate street surface railroads generally, to merge or consolidate with other corporations, to contract with other railroad corporations for the operation by each of the railroads of either of the
715*x* other, in whole or in part, by lease, traffic contract or otherwise, by virtue of which franchises other than the franchise to construct, maintain and operate a street surface railroad in particular specified locations, the relator acquired the right to operate all of the aforesaid special franchises owned and operated by it on the second Monday of January, 1900, as a single railroad system.

XXII. All the special franchises owned by the relator on the second Monday of January, 1900, were operated as one railroad system. Continuous routes of travel had been established by the relator by uniting several special franchises into a single line of operation without regard to whether said special franchises so united were owned or leased by the relator, A system of transfers had been established by which passengers were transferred from one line of travel to another and were carried over long distances and over many special franchises in the boroughs of Brooklyn and Queens, for a single fare.

XXIII. Neither the State board nor any member thereof at any time personally visited or inspected the railroads, or any of the tangible property forming part of any of the special franchises of the relator, to aid them in arriving at their valuations of such special franchises.

XXIV. In valuing the special franchises of the relator the State board made one valuation to cover all special franchises of the relator and made one assessment of all special franchises together, and did not make a separate valuation or assessment of each special franchise, but treated all of such special franchises as a single franchise and valued them as a single special franchise.

XXV. In valuing for purposes of assessment as aforesaid the special franchises owned by the companies whose roads were
715*y* leased by the relator to other companies, the State board considered rentals agreed to be paid as appreciating factors of value, that is to say, the greater the sum agreed to be paid under the lease the larger the value which was placed upon the line covered by the lease.

XXVI. The said assessment of the special franchises of the relator in the borough of Queens was excessive by reason of overvaluation, and by reason of inequality as between the assessment of such special franchises and of other special franchises by said State board for said year in said boroughs of Brooklyn and Queens

Conclusions of Law so Requested and Refused.

(1.) The assessment complained of by the relator is illegal in that the State board had no jurisdiction or authority to make the assessment for the reason that the statute, namely, chapter 712 of the Laws of 1899, under and pursuant to which the State board claims the power and authority to act in the matter and to fix and determine the valuation of the special franchises for the purpose of assessment, is in violation of section 2 of article X. of the constitution.

(2.) Chapter 712 of the Laws of 1899 is unconstitutional in that it takes away from the local assessors of the city of New York a substantial portion of the functions of assessment, which they exercised at the time of the adoption of the constitution of 1846, and at the same time transfers the same to a State board not elected by the people of the city or appointed by local authorities.

(3.) Chapter 712 of the Laws of 1899 is unconstitutional in that it takes away from the local assessors of the city of New York a substantial portion of the functions which they exercised at the time of the adoption of the State constitution of 1894, and at the same
715 time transfers the same to a State board not elected by the people of the city or appointed by local authorities.

(4.) Under the provisions of chapter 712 of the Laws of 1899, the duty of the local assessors in relation to the assessment of special franchises made by the State Board of Tax Commissioners is merely ministerial.

(5.) The action of the local assessors in placing on the tax rolls the assessed valuation of special franchises as made by the State Board of Tax Commissioners is merely ministerial.

(6.) Under the provisions of section 47 of chapter 712 of the Laws of 1899, the tangible property forming part of the various special franchises of the relator is not taxable except under the assessment made as provided in said chapter by the State Board of Tax Commissioners.

(7.) Under the provisions of section 47 of chapter 712 of the Laws of 1899, local assessors are prohibited from assessing the tangible property which forms part of any special franchise taxable under said chapter.

(8.) Under the provisions of chapter 712 of the Laws of 1899, the exclusive power of valuing and assessing special franchises is vested in the State Board of Tax Commissioners.

(9.) It was the intention of the legislature, in enacting chapter 712 of the Laws of 1899, that the intangible part of any special franchise should be taxed upon an assessment made by the State Board of Tax Commissioners, or not at all.

(10.) All the parts of chapter 712 of the Laws of 1899 are so mutually connected with and dependent on one another, as to warrant the belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not have passed the residue independently.

715*aa* (11.) The purpose of chapter 712 of the Laws of 1899 is to accomplish a single object only, to wit, the taxation of special franchises upon assessments made by the State Board of Tax Commissioners, and all the provisions of the chapter are necessary to accomplish that object.

(12.) Those provisions of the statute, namely, chapter 712 of the Laws of 1899, which relate to the valuation and assessment of special franchises by the State Board of Tax Commissioners, cannot be eliminated from the statute without essentially changing its scope and operation, and defeating its general purpose.

(13.) If those provisions of the statute, namely, chapter 712 of the Laws of 1899, which require the valuation and assessment of special franchises by the State Board of Tax Commissioners, are invalid, the remainder of the statute is not capable by its own terms of being carried into effect, consistently with the intent of the legislature which enacted it.

(14.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, and the assessment made pursuant to it, are in violation of section 10 of article I. of the Federal Constitution, in that they impair the obligations of the contracts under the terms of which the relator company and its predecessors in title have for many years held their franchises to construct, operate and maintain street railroads in the city of New York.

(15.) Chapter 712 of the Laws of 1899 impairs the obligation of the contracts embodied in the franchise grants made by the State to the relator company and its predecessors in title and consented to by the municipality, and for this reason is unconstitutional and void.

(16.) The tax authorized by chapter 712 of the Laws of 1899 is to be laid on no property or right but the right to use the
715*bb* streets, and the tangible property in the streets connected with that right.

(17.) The right made taxable by chapter 712 of the Laws of 1899 is not the whole body of the relator's franchises, but merely the special right aforementioned to use the streets and the tangible property in the streets connected with the same.

(18.) The property made taxable by chapter 712 of the Laws of 1899 does not include the general corporate franchises of the relator, nor any of the personal property, nor the good will, of the relator, nor any of its real estate, except its special franchises.

(19.) The valuation of the special franchise, which, by chapter 712 of the Laws of 1899, is to be fixed by the State board, is the intrinsic value of the right to use the streets, as granted, and of the tangible property in the streets connected with that right, and not the value of the use that is made of the right by the owner, nor the value of the profits derived from such use.

(20.) A special franchise has no ascertainable value as property, beyond the value of the tangible property in connection with it.

(21.) The value of the relator's franchise to use the streets cannot

be separated from the value of its other property and rights used in its business.

(22.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, fails to prescribe any rule, method or principle of valuation for the special franchises sought to be taxed, and for this reason the statute violates the provisions of the Federal and State Constitutions, which prohibit the taking of property without due process of law.

(23.) The assessment is illegal in that it is impossible, from the nature of the object taxed, to supply any rule, method or
715*cc* principle of valuation for the guidance of the assessors in valuing the special franchises sought to be taxed, and, for this reason, the statute, namely, chapter 712 of the Laws of 1899, violates the provisions of the Federal and State Constitutions, which prohibit the taking of property without due process of law.

(24.) The assessment is illegal because the statute, namely, chapter 712 of the Laws of 1899, is impossible of rational execution, in consequence of its failure to prescribe any rule, method or principle of valuation of the special franchises sought to be taxed, and must therefore be treated as a nullity, and an assessment under it is therefore in violation of both the Federal and State Constitutions.

(25.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, violates section 24 of article III of the constitution of New York, in that it fails to state definitely the object to which the tax is to be applied without referring to some other law to fix such object.

(26.) The assessment is illegal because the relator was refused the full and fair hearing to which it was entitled by the constitution of the State and Federal Constitution before final assessment could properly be made against it.

(27.) The assessment is illegal because the State board refused the relator the full and fair hearing provided for and contemplated by section 44 of article 2 of the tax law, the statute in such case made and provided.

(39.) The assessment is illegal because, in determining the valuation of the special franchises owned by the relator company as aforesaid, the board erred in considering the tax rate prevailing on real estate in New York county.

(40.) The assessment is illegal because, in determining the
715*dd* valuation of the several special franchises owned by the relator on January 8, 1900, it was errone-us for the State board to consider as factors of value the market value of the share stock of the relator, the market value of the bonds of the relator, and the market value of the bonds of the several corporations which were consolidated as aforesaid into the Metropolitan Street Railway Company.

(41.) The aggregate value of the bonds and share stock of the relator at their market prices represented all the property of every kind possessed by the relator and the good will of its business, and it is impossible to determine from such aggregate value or market

prices the value of the special franchises owned by the relator on the date aforesaid.

(42.) The assessment is illegal because, under the tax law of this State, the State board had no jurisdiction to value any property of the relator, except the special franchises owned by it, and had therefore no right to consider, as they did consider, as a factor of value of the special franchises, the fact that the relator owned other valuable property, and was in receipt of large earnings derived partly from the use of such other property, and partly from the operation of other special franchises which it held under leases, but which were owned by and assessed to other railroad corporations.

(43.) No basis for the determination of the value of the relator's special franchises is afforded by the consideration of the following matters (or any of them), that is to say: the market value of the share stock of the relator, the market value of the bonds of the relator, the market value of the bonds issued by the several corporations which consolidated with the Metropolitan Street Railway Company; the amounts of the gross and net earnings derived from the operation of the system of railways of the relator; the value of all the corporate or other assets of the relator; the value of the
715ee good will of the relator; the rights of the relator to operate cars over the lines owned by other corporations; the earning capacity of the relator and its business methods and skill; the methods of operation and the personal management of the relator's system of railways; the relator's right to operate its cars over continuous routes owned by other corporations and over their special franchises which it leased or controlled; the right which the relator possessed to transfer passengers from one route or line of operation to another for a single fare; the right which the relator possessed to create and operate continuous routes of travel by the union of special franchises, some of which it leased and others of which it owned; the productive capacity of the said system; and the operation of relator's system of railroads as a whole.

(44.) The State Board of Tax Commissioners, in this proceeding, having testified that, in making their valuation of the relator's special franchises, they considered, as appreciating factors of value, certain facts and circumstances connected with the relator's business, and with its corporate property and obligations and the market value thereof, it follows that their consideration of the said facts resulted in making their valuation larger than it would have been, had such facts not been considered by them.

(45.) The assessment is illegal for the reason that it is not the result of the application by the State board of any rule, method or principle of valuation whatever.

(46.) The assessment is illegal for the reason that the State board did not make a separate valuation of the tangible property connected with the special franchises on the basis of its cost of reproduction, but valued and assessed the tangible property, together with the intangible property, in one valuation and assessment.

(47.) Even were the assessment reduced by deducting thirty-three

per cent. thereof, for the purpose of correcting its inequality,
716 it would still be erroneous for over-valuation, because the State Board of Tax Commissioners, in valuing relator's special franchises, took into account, as appreciating factors of value, facts and elements which it was illegal for them to consider, and which afforded no basis for determining such value.

(48.) Even were the assessment reduced by deducting thirty-three per cent. thereof, for the purpose of correcting its inequality, it would still be erroneous by reason of over-valuation, because the State Board of Tax Commissioners, in valuing relator's special franchises, increased their valuation by considering as factors of value facts which they should have disregarded in determining such valuation.

(49.) Even were the assessment reduced to an amount which should bear the same ratio to the present assessment as the average assessment of real estate either in the city of New York or in the State of New York bears to the full value of such real estate in said city or State, the assessment would still be excessive and erroneous for over-valuation, because, in determining it, the State Board of Tax Commissioners increased their valuation of the relator's special franchises by considering elements of value which did not belong to such special franchises, with the result that their valuation included values which belonged exclusively to other property taxable under other laws.

(50.) Even if the assessment (for the purpose of correcting its inequality) were reduced to 67 per cent. of the said State board's valuation of relator's special franchises, the assessment would still be erroneous for over-valuation.

(51.) The inclusion by the State board in the final valuation on which their assessment of the relator's property has been based of any appreciating element or factor, the effect of which is incapable of pecuniary admeasurements, invalidates the entire assessment.

717 (52.) It is impossible to measure pecuniarily the effect on the valuation upon which the State board's assessment was based of the various appreciating factors, or any of them, which are found in this report to have illegally entered into the valuation as fixed by the State board.

(53.) The inclusion in the final valuation as fixed by the State board of the elements which are found in this report (of the referee) to have been illegally considered as appreciating factors, has resulted in a material over-valuation of the special franchises of the relator.

(54.) Even were the assessment reduced for the purpose of correcting its inequality, it would still be erroneous because of over-valuation by reason of the fact that none of the special franchises of the relator has any ascertainable value (beyond the value of the tangible part thereof) apart from the other property, franchises and business of the relator, with which each special franchise has become inextricably interwoven.

(55.) The grant by the State with the consent of the municipality to the relator company or its predecessors in title of each of its special franchises and the acceptance of the same by the grantee thereof constituted a contract within the meaning of section 10 of article I. of the Federal Constitution prohibiting States from passing laws impairing the obligations of contracts.

(56.) The facts proved in this case leave no room for doubt that a provision must be implied in all the contracts embodied in the franchise grants made by the State with the consent of the municipal authorities to the relator company or to its predecessors in title to the effect that the amount which the relator company or its predecessors agreed to pay in exchange for the franchise rights granted should not be subsequently increased by the exaction of additional taxes or otherwise.

718 (57.) It was the intention of the legislature in the enactment of chapter 65 of the Laws of 1886 entitled "An act to secure adequate compensation for the right to construct, maintain, use, operate or extend street railroads in cities and villages," and the amendments thereto, and in the enactment of the railroad law, so far as said law embodies said chapter and amendments, that all rights and franchises granted and acquired under and in pursuance of said statutes should be exempted from any further burdens or taxes than those to which the grantees of said rights and franchises became liable under the terms of the contracts embodied in the grants or which should otherwise be expressly required to be paid by laws in force when such franchises should be granted.

(58.) Prior to or about the year 1890, the policy of the State, as expressed in its legislation, was to prevent a consolidation of parallel street railroad lines; subsequent to such date, the policy of the State, as evidenced by new legislation, was changed so as to encourage and promote the consolidation of such railroads and the joint operation of competing street surface lines by corporate merger, traffic contracts or leases, upon the basis of and in exchange for the extension of transfer facilities over the routes of contracting companies without an increase of fare.

(59.) Upon the basis of these franchise grants and upon the basis of existing law, and in acceptance of the offer of the State as expressed upon the face thereof, the relator company has expended many millions of dollars in developing and improving its service and for transfer facilities obligatory upon it under its franchise grants, the same having a cash value of a million dollars and upward in each year, and constituting a part of the consideration, moving from it to the State and municipality under the contract created by the acceptance of the offer aforesaid.

(60.) At all times when the various street railroad franchises 719 owned by the relator were granted, it was a rule of property in this State that neither the State nor the municipality could lawfully impose any further burdens or taxes on such franchises beyond those expressly reserved in the statutes and ordinances

granting or consenting to the same and those required to be paid by the laws in force at the times such franchises were granted.

(61.) Each and every of the street railroad franchises owned by the relator was acquired and accepted by the grantees thereof in reliance upon the said rule of property, and the rights conferred by the said franchises are property rights based upon the said rule of property, and where acquired upon the faith of the same, and cannot now lawfully be disturbed by imposing any further tax or burden upon said franchises or any of them.

(62.) A perfected railroad franchise constituted either by direct legislative grant or by consent of the local authorities and property-owners in pursuance of the constitution and general laws, or confirmed thereby, especially when followed by actual construction and operations, is a property right that cannot be afterwards taken away or diminished either by constitutional amendment or by legislative or municipal action, except in the exercise of the police power or the right of eminent domain.

(63.) The rights to construct, maintain and operate street railroads over streets and public places in the city of New York, owned by the relator, having been constituted either by direct legislative grant, or by consent of the local authorities and property-owners in pursuance of the constitution and general laws, and having been followed by actual construction and operation, are property rights that cannot be taken away or diminished by legislative or municipal action, except in the exercise of the police power or the right of eminent domain.

720 (64.) The railroad franchises owned by the relator cannot be taken away or diminished nor the burdens upon them increased by additional taxation or otherwise, except in the exercise of the police power, or right of eminent domain.

(65.) The taxation of the special franchises of the relator under the provisions of chapter 712 of the Laws of 1899, is a diminution of the relator's property in the said special franchises, and is illegal because it is the taking away of property without compensation or due process of law.

(66.) The assessment is illegal because each special franchise owned by the several corporations which consolidated as aforesaid, and by such consolidation created the relator, was a special and distinct property, and for the purpose of assessment and taxation should be treated as a separate piece of real estate and valued as such; and in treating all the special franchises which were owned by the relator on January 8, 1900, as a single franchise, and valuing them at a single gross sum, the respondents violated the provisions of the statute, to wit, section 42 of article II. of the General Tax Law, which required them to value each special franchise subject to assessment in each city, town or tax district.

(67.) Each right to construct, maintain and operate a street railroad, which right was owned by any one of the corporations which consolidated into the relator, together with the railroad which such corporation, prior to such consolidation, had constructed upon and

along the streets and public places over which it possessed such right, constituted, prior to such consolidation, a separate special franchise, as the same is defined in section 2 of chapter 712 of the Laws of 1899.

(68.) Each right to construct, maintain and operate a street railroad, which right was owned by any one of the corporations which consolidated into the relator, together with the railroad which such corporation, prior to such consolidation, had constructed upon
721 and along the streets and public places over which it possessed such right, constituted after such consolidation, and has ever since constituted a separate special franchise, as the same is defined in section 2 of chapter 712 of the Laws of 1899.

(69.) Each of said separate special franchises is a separate and distinct parcel of land or real estate, as the same is defined in section 2 of article 1 of the General Tax Law of this State.

(70.) Each of the separate special franchises formerly owned by the street railroad corporations (or any of them) which consolidated into the relator company, and which special franchises are now owned by the relator, is a separate parcel of real estate, and its valuation for the purposes of chapter 712 of the Laws of 1899 should have been fixed and determined separately by the State Board of Tax Commissioners, if any valuation or assessment whatsoever of such special franchises could have been legally or constitutionally made by said board.

(71.) The vesting in the relator of the title and ownership to and of the said separate special franchises, did not take from them the character of separate and distinct pieces of real estate within the meaning of section 2 of article 1 of the General Tax Law.

(72.) The operation by the relator of any of the said special franchises in combination with other special franchises did not take from such special franchises so operated the character of separate and distinct pieces of real estate.

(73.) Under the provisions of chapter 712 of the Laws of 1899, if valid, it was the duty of the State Board of Tax Commissioners to fix and determine a separate and distinct valuation of and for each of the eighteen special franchises of the relator.

(74.) Each of the special franchises of the relator is subject to the same conditions, liens and encumbrances to which it was sub-
722 ject prior to the time when the title to such franchise became vested in the relator.

(75.) The State board having valued all the special franchises of the relator as one, and having fixed and determined one aggregate valuation for the same, the entire assessment entered upon said valuation, if at all valid, became a lien upon each and all of the relator's special franchises, which lien was prior and superior to the lien of any mortgage which theretofore encumbered any of the relator's special franchises.

(76.) The assessment of the relator's special franchises is illegal, because, in determining the valuation of the several special franchises owned by the relator on January 8, 1900, it was erroneous for

the State board, as they did, to consider as factors of value the gross and net earnings of the relator, as such earnings were derived, to a large extent, from the operations of special franchises not owned by the relator, but which were owned by and assessed to other railroad corporations.

(77.) The assessment is further illegal in that all the special franchises owned by the relator company are assessed collectively as one special franchise, instead of each special franchise being assessed separately.

(78.) The provisions of the charter of the city of Brooklyn, first enacted by chapter 564 of the Laws of 1880, and afterwards re-enacted by chapter 583 of the Laws of 1888, chapter 378 of the Laws of 1897, and chapter 466 of the Laws of 1901, and the provisions of the ordinance of the city of Brooklyn adopted in pursuance thereof, by the common council of said city, together authorizing and requiring the annual payment by the relator to the city of Brooklyn and to its successor, the city of New York, of the sum of twenty dollars for each railroad car used on its railroad, and providing that such payment should "be taken in full satisfaction for the use
723 of the streets," meant that such payment should be taken in full satisfaction of all impositions, claims or demands of like general nature or character, upon, or for, or on account of, the franchise, right or privilege to use the streets. Such statutes and ordinances were intended to be, and were, enacted and adopted for the purpose of raising revenue and not for the purpose of paying the expenses of examination into the qualifications of the railroad companies or of their employees, nor of inspection, supervision or of other service in the nature of police supervision of such railroad cars or the operation thereof; but such annual payments were intended to be and are taxes or in the nature of taxes and not license fees as distinguished from taxes. The provisions of said statutes and ordinance constituted an offer on the part of the State and of said city that such annual payments should be taken in full satisfaction of all taxes or impositions, claims or demands in the nature of taxes upon, or for or on account of, the right, franchise or privilege of the relator to use the streets, except as to the obligations of the relator to keep the streets or any part thereof in repair; and the acceptance by the relator of such statutes and ordinances constituted the execution of a contract accordingly between the State, the said city and the relator, and such contract was referred to and confirmed and ratified by each written instrument annually executed and delivered by said city to the relator, providing that the relator might run its cars on the streets in said city "under the provisions of the contract of the relator with said city;" and the annual payment by the relator to the city of Brooklyn until January 1, 1898, and thereafter to the city of New York, constituted a contract annually executed and performed between the State and the city of Brooklyn, and its successor, the city of New York, of the one part, and the relator, of the other part, to the effect that such annual payments should be and were taken

each year in full satisfaction for all taxes, impositions, claims
724 or demands in the nature of taxes to be imposed upon or demanded or collected from the relator by the State and said cities for or on account of the right, franchise and privilege of the relator to use the streets except as to the obligations of the relator to keep the streets or any part thereof in repair.

The assessment and taxation of the intangible franchise, right and privilege of the relator to use the streets during the year in question would be a violation of the said contract between the State, the city and the relator, and would impair the obligation of such contract. Therefore, chapter 712 of the Laws of 1899, is not applicable to the situation of the relator for the purpose of authorizing the assessment or taxation of the intangible property included in the special franchise of the relator.

(79.) Assuming chapter 712 of the Laws of 1899 to be otherwise constitutional, valid, operative and enforceable, it is applicable to the situation of the relator only for the purpose and to the extent of authorizing the assessment and taxation of only the tangible property included in the special franchise of the relator.

SHEEHAN & COLLIN,
Attorneys for the Relator, No. 32 Nassau Street,
New York City.

725 Supreme Court, Albany County.

PEOPLE *ex Rel.* BROOKLYN CITY RAILROAD Company *against* THE STATE BOARD OF TAX COMMISSIONERS.	Assessment of 1900. No. 32.

Relator's Exceptions to Referee's Report, and to Refusals to Find as Requested.

The relator herein, saving and reserving all objections to the manner and form of the findings of fact and conclusions of law of the referee herein not herein precisely and exactly specified, files the following exceptions to the same:

(1.) The relator specifically excepts to the referee's twenty-first finding of fact and to each and every part thereof, and without limiting this exception further specifically excepts to so much of said thirty-fourth finding as finds that the respondents considered the market value of the relator's stocks and bonds for what it might be worth and not as conclusive or as an absolute measure of valuation, further specifically excepts to so much of said finding as finds
726 that the respondents in assessing the special franchise of the relator, and in arriving at the valuation thereof, did not include in such assessment the valuation of any property except as is in, above, upon, under or running through the public streets and public places of said city, including the franchises, rights, au-

thority or permission to construct, operate and maintain its foundation, roadbed, substructure and superstructure, with their appliances in, upon, above, under or through said streets and public places; and further specifically excepts to so much of said finding as finds that the respondents did not include in such assessment or valuation the value of the right to be, or the franchise to be, a corporation; and further specifically excepts to so much of said thirty-fourth finding as finds that the respondents did not include the value of the good-will of the business carried on by such corporation, nor did the respondents include the value of any property other than that stated and described in said finding as having been included by them, and further specifically excepts to so much of said finding as finds that such assessment as made by such special franchise of the relator includes the value of the tangible and intangible property in the streets of the city of New York, and was arrived at upon consideration of all the facts and circumstances affecting the value of such property, including the use or the right to use such public streets and public places which the respondents were able to ascertain.

(2.) The relator specifically excepts to the referee's twenty-second finding of fact, and to each and every part thereof; and further specifically excepts to so much of said finding as finds "that the actual and true value of all the special franchises of the relator, in the borough of Brooklyn, as finally determined by the defendants and as I find is $7,608,184. The actual value of all the special franchises of the relator, in the borough of Queens, as finally determined by the defendants and as I find is $1,879,445," both as a finding of fact and as an implied conclusion of law, and relator spe-
727 cifically excepts to such implied conclusion of law as found by the referee, and to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(5.) The relator specifically excepts to the referee's 23d finding of fact, and specifically to so much of said finding that finds or implies that the value of the relator's special franchises in the borough of Brooklyn is $7,608,184, and that the sum to be deducted is $2,510,700.72, and that $5,097,483.28 is the value of the relator's special franchises in the borough of Brooklyn for the purpose of assessment and taxation under the special franchise tax act, and that the value of the relator's special franchises in the borough of Queens is $1,879,445, and that the sum to be deducted is $620,216.85, and that the sum of $1,259,228.15 is the value of the relator's special franchises in the borough of Queens for the purpose of assessment and taxation under the special franchise tax act. The relator, however, does not except to so much of said finding as finds or implies that other real estate in the city of New York was assessed at only 67 per cent. of its actual and true value, and that to equalize the relator's assessment with the assessment of such other real estate a deduction of 33 per cent. should be made from the actual value.

(6.) The relator specifically excepts to the 1st conclusion of law as

found by the referee, and as to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(7.) The relator specifically excepts to the 2d conclusion of law as found by the referee, and as to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(8.) The relator specifically excepts to so much of the 3d
728 conclusion of law found by the referee, — finds that the assessments should be confirmed, and that the assessment of $5,097,483.28 must be taken as the value of the relator's special franchise in the borough of Brooklyn, as against the evidence, contrary to the evidence, against the weight of evidence and unsupported by the evidence. But the relator does not except to so much thereof as finds or implies that the relator is entitled to a deduction from the actual value of its special franchise for the purpose of equalizing its assessment with the assessment of other real property in the city of New York, and that the relator is entitled to a deduction from its assessment as entered on the assessment rolls of the city of New York, in the borough of Brooklyn, of the value, as assessed by the State board, of its special franchises in the borough of Queens.

(9.) The relator specifically excepts to the referee's refusal to find each of the proposed findings of fact and each of the proposed conclusions of law requested by the relator and refused by the referee.

SHEEHAN & COLLIN,
Attorneys for Relator, No. 32 Nassau Street, New York City.

To John Franey, Esq., county clerk. Hon. John C. Davies, attorney-general, attorney for respondents.

729 Supreme Court, Albany County.

PEOPLE *ex Rel.* BROOKLYN CITY RAILROAD Company *against* THE STATE BOARD OF TAX COMMISSIONERS.	Assessment of 1900. No. 32.

Notice of Trial.

SIR: Please take notice, that, upon the report of Hon. Robert Earl, the referee herein, and upon the petition, writ of certiorari, return, the evidence and proceedings before the referee, and all the papers and proceedings herein, we shall move before this honorable court at a special term thereof, to be held at the county court-house, in Albany county, on the 15th day of July, 1902, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard,

that the court proceed to hear, try and determine this proceeding; and you will

Further please take notice, that we shall then and there bring on this proceeding to a hearing and trial, and shall move for a final order confirming the assessment made herein on or about
730 the 30th day of April, 1900, and for such other or further relief or both, as to this court may seem to be just and proper in the premises.

Dated July 7, 1902.

JOHN C. DAVIES,
Attorney-General, Attorney for Respondents, Albany, N. Y.

To Sheehan & Collin, attorneys for relator.

731 Supreme Court, Albany County.

PEOPLE *ex Rel.* BROOKLYN CITY RAILROAD Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Assessment of 1900. No. 32.

Decision.

An order of reference having been made herein and entered in the office of the clerk of Albany county on the 18th day of April, 1901, by which it was referred to Hon. Robert Earl, as referee, to take and report to this court such evidence upon the several issues of fact raised by the petition, writ and return herein as might be adduced before him by either of the parties hereto, with his findings of fact and conclusions of law, and the said referee, pursuant to said order, having filed his report and the evidence and proceedings taken by and before him in the office of the clerk of Albany county on the 15th day of July, 1902, and exceptions having been filed to said report, and this proceeding having come on for a hearing, trial and final determination before the court at a special term thereof, held by the undersigned without a jury.

Now, after hearing counsel for the relator and for the re-
732 spondents respectively, and findings of fact and conclusions of law having been requested by the relator, I decide and find, *pro forma*, as follows:

Findings of Fact.

I. The relator, The Brooklyn City Railroad Company, was duly incorporated December 17, 1853, under and in pursuance of the general law of the State of New York known as chapter 140 of the Laws of 1850, and then became and ever since has been a domestic street surface railroad corporation, and its principal office has been and still is located in the former city Brooklyn, being the present borough of Brooklyn, in the city of New York.

II. From and before the year 1850, and until January 1, 1898, the city of Brooklyn was a duly incorporated city of said State, and on January 1, 1898, became and since has been the borough of Brooklyn, in the county of Kings, and a part of the city of New York, under and in pursuance of the Greater New York charter.

III. By resolution of the common council of the city of Brooklyn, duly adopted December 22, 1853, a copy of which is set forth in full in the evidence hereto annexed, marked "Exhibit 21*c*" (pp. 424–32), the consent of the common council of the city of Brooklyn was duly given to the relator for the construction, maintenance and operation of a street surface railroad upon certain terms and conditions, in said resolutions expressed, upon and through the streets of said city therein mentioned.

By chapter 77 of the Laws of 1854, a copy of which is also set forth in full in said Exhibit 21*c* (pp. 433–34), the relator was authorized to construct and operate its railroad over the several routes mentioned in its articles of association and to continue the same from the termination thereof, respectively, into or through any
733 town in the county of Kings, over, across or upon any road or highway therein, upon the terms and conditions in said act set forth.

IV. Thereafter, and at various times between December 17, 1853, and the year 1897, the relator, by consolidation, merger, purchase or otherwise, acquired and became the owner of the property, rights, privileges and franchises of certain other street surface railroad corporations, as follows:

Grand Street and Newtown Railroad Company;
Greenpoint and Williamsburg Railroad Company;
Nassau Railroad Company;
Brooklyn City, Hunters Point and Prospect Park Railroad Company;
Brooklyn Crosstown Railroad Company;
Williamsburg and Flatbush Railroad Company;
New Williamsburg and Flatbush Railroad Company;
Bushwick Railroad Company;
Greenpoint and Lorimer Street Railroad Company;
Calvary Cemetery, Greenpoint and Brooklyn Railroad Company;
South Brooklyn Street Railroad Company.

Also, by assignment, the relator, in the year 1896, acquired certain of the franchises of the Brooklyn, Bergen Beach and Canarsie Railroad Company.

V. The special franchises of the Brooklyn City Railroad Company, as constituted and constructed on the second Monday of January, 1900, consisted of forty-five different franchises granted to thirteen different companies or individuals in the boroughs of Brooklyn and Queens. The several streets, avenues and public places on which said special franchises have been so constructed are set forth and described on the maps offered and received in evidence, marked "Exhibits B 1 to B 10," inclusive, and also in the evidence hereto annexed. Of these forty-five different special franchises the follow-

ing could not be operated profitably as separate and independent roads:

734 The special franchise formerly of the South Brooklyn Street Railroad Company on Second avenue, between Thirty-ninth and Sixtieth streets, with a spur running from Second avenue to Third avenue on Fifty-second street, and a spur on Thirty-ninth street from Second avenue to Third avenue, as shown by map No. B 9.

The two special franchises formerly of the Calvary Cemetery, Greenpoint and Brooklyn Railroad Company, as shown by map No. B 8.

The special franchises formerly of the Greenpoint and Lorimer Street Railroad Company, as shown by map No. B 7.

The special franchises formerly of the Bushwick Railroad Company, as shown by map No. B 6.

The special franchises formerly of the New Williamsburg and Flatbush Railroad Company, as shown by map No. B 5.

The special franchises of the Brooklyn Crosstown Railroad Company, as shown by map No. B 4.

Four out of the five special franchises of the Grand Street and Newtown Railroad Company, as shown by map No. B 3.

VI. The terms and conditions upon which the right, privilege and franchise of constructing, maintaining and operating each of the street surface railroads contained in each such special franchise, so far as the same are described and set forth in the evidence hereto annexed, and in the exhibits annexed thereto, are correctly set forth and described therein.

VII. Certain of the special franchises now owned by the relator which were formerly owned by other corporations were, while so owned by such other corporations, encumbered by mortages to secure the payment of the bonds of such other corporations

735 then owning such franchises to the total principal amount of $925,000, which are still unpaid and outstanding. The special franchises of the relator are encumbered by mortgages to secure bonds issued by it of the total principal amount of $6,000,000, which are unpaid and outstanding. The value of the tangible property included in all the special franchises of the relator located in the borough of Brooklyn on the second Monday of January, 1900, was $1,745,888.

The value of the tangible property included in all the special franchises of the relator located in the borough of Queens on the second Monday of January, 1900, was $329,112.

VIII. The charter of the city of Brooklyn was amended by an act of the legislature of the State of New York, known as chapter 564 of the Laws of 1880, which provided that the common council of said city should fix an annual license fee, not exceeding the sum of twenty dollars, for each street or horse car daily operated and used in said city; that every railroad company operating or using such cars should, on or before the 1st day of June in each year, certify to the city clerk the average number of cars daily operated and used

by said company, and that every such railroad company should, on or before the 1st day of July in each year, pay to the treasurer of said city the license fee so established for the average number of cars so operated and used by said company; and that said license fees should be taken in full satisfaction for the use of the streets or avenues, but the same should not relieve said company from any obligations required by law to keep such streets or avenues, or any part thereof, in repair.

Thereafter, and on or about December 27, 1880, in pursuance of said act of the legislature, the common council of the city of Brooklyn adopted an ordinance providing that licenses should be granted by the mayor from time to time to owners of railroad cars, and that there should be charged and paid to the city treasurer for the use of the city on issuing such licenses by the parties to whom they should be granted for each railroad car, large or small, on horse railroad or steam railroad, twenty dollars.

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The said ordinance thereafter continued in force as an ordinance of the city of Brooklyn until the incorporation of the city of Brooklyn in the city of New York, on January 1, 1898, and has since continued in force in the borough of Brooklyn, by virtue of the provisions of the Greater New York charter.

In pursuance of said act of the legislature and of the said ordinance, the city of Brooklyn issued and delivered annually to the relator an instrument in writing, signed by the mayor and attested by the clerk, under the corporate seal of said city, declaring that, in pursuance of an ordinance of the common council, the said city thereby licensed and appointed the Brooklyn City Railroad Company to run cars on the route known as the Brooklyn City route, in the streets of the city of Brooklyn, under the provisions of the contract of said company with said city; said company obeying such rules and ordinances of the common council of said city as should from time to time be made for regulating the duties of such appointment. The relator, in pursuance of said acts of the legislature and of the said ordinance, annually paid to the city treasurer of the city of Brooklyn until January 1, 1898, and thereafter to the chamberlain of the city of New York, twenty dollars per car for the average number of cars operated and used by the relator in the former city and present borough of Brooklyn.

The provisions of the said act of the legislature were re-enacted without substantial change by an act of the legislature known as chapter 583 of the Laws of 1888, being the revised charter of the city of Brooklyn, and substantially the same provisions were again re-enacted by an act of the legislature of the said State known as the Greater New York charter, being chapter 378 of the Laws of 1897, taking effect January 1, 1898, and were again re-enacted by an act of the legislature of the State of New York known as the revised Greater New York charter, being chapter 466 of the Laws of 1901, taking effect January 1, 1902. Copies of said acts of the legislature and of said ordinance and of

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various proceedings in relation to said ordinance are set out in the evidence hereto annexed and marked "Exhibit 3 H" (pp. 324-333).

IX. That the relator has filed with the State Board of Tax Commissioners all reports required by law or required to be filed by said commissioners. Copies of such reports are in evidence and reference is made thereto for their contents.

X. That thereafter, and on or about the 20th day of March, 1900, the State Board of Tax Commissioners, claiming to act under and pursuant to chapter 712 of the Laws of 1899, proceeded to fix and determine the valuation of the special franchises of the relator company in the borough of Brooklyn at the sum of $10,559,900, and in the borough of Queens at the sum of $950,500, and did thereupon make the assessments of such special franchises at the sums aforesaid.

XI. That immediately after making the assessment the State board gave to the relator company a notice in writing, stating in substance that such assessment had been made, and that the total valuation of the relator's special franchise in the borough of Brooklyn was $10,559,900, and in the borough of Queens was $950,500, and that the State board would meet at its office in the city of Albany on the 10th day of April, 1900, at 10 o'clock a. m., to hear and determine any complaints concerning such assessments.

XII. That the relator company, by its counsel, appeared, pursuant to such notice, at the time and place therein stated, before the
738 State board, and requested to be informed by the board concerning and as to what was the amount which said board had determined to be the valuation of the tangible property of the relator company, and as to what was the amount fixed and determined by the board to be the valuation of the intangible franchises, rights and permissions of the relator company; and as to what was the method, rule or principle, if any, adopted and applied in ascertaining and determining the valuation; but the board refused to give the relator company the whole or any part of the information so requested.

XIII. That the relator company thereupon complained of the assessment, and filed with the State board a written statement under oath specifying the grounds of its complaint.

XIV. That thereafter, and on or about the 30th day of April, 1900 the State Board of Tax Commissioners, still claiming to act pursuant to chapter 712 of the Laws of 1899, finally determined the valuation of the special franchise of the relator company in the borough of Brooklyn to be the sum of $7,608,184, and in the borough of Queens to be the sum of $1,879,445, and on or about April 30, 1900, filed with the department of taxes and assessments in the city of New York a written statement of such valuation as finally fixed and determined by the State board, and at or about the same time gave notice to the relator company that such written statement had been filed with the department of taxes and assessments of the city of New York.

XV. Thereafter the commissioners of taxes and assessments of

the city of New York prepared the assessment-rolls of the real and personal property of the several parts of the city for the year 1900, and entered on such assessment-rolls for the borough of Brooklyn before the final review or certification of such rolls by them, the valuation of the special franchises of the relator in the borough of Brooklyn at the total amount so fixed by the State board as
739 the value of all the special franchises of the relator in both the boroughs of Brooklyn and Queens, to wit, at the sum of $9,487,629, and made no other entry whatever on said assessment-rolls of said city of the valuation of the special franchises of the relator in the borough of Queens, and having annexed thereto their certificate that such assessment-rolls were correct in accordance with the entries of the several books or records in that department, duly verified the same and delivered such assessment rolls to the municipal assembly of New York city, as required by law on the first Monday of July, 1900.

XVI. That within fifteen days after the final completion and filing of the assessment-roll in the city of New York, the relator company applied for and obtained a writ of certiorari to review the assessment, pursuant to which writ this proceeding is pending.

XVII. The State board did not make a separate valuation or assessment of each special franchise or of each franchise, right, privilege or permission owned by the relator, but made one valuation or assessment of all the special franchises of the relator in the streets of the city of New York in the borough of Brooklyn, and valued all of such special franchises owned by the relator in the borough of Brooklyn on the second Monday of January, 1900, at the aggregate sum of $7,608,184, and made one valuation or assessment of all the special franchises of the relator in the borough of Queens, and valued all of such special franchises owned by the relator in the borough of Queens on the second Monday of January, 1900, at the aggregate sum of $1,879,445.

XVIII. The special franchises owned by the relator, and so assessed in the borough of Brooklyn, did not, in fact, all adjoin each other, and were not, in fact, all physically united and did not in every instance furnish a continuous route of travel, and the same is true of the special franchises owned by the relator and so assessed in the borough of Queens.

740 XIX. That in making such assessment in each of said boroughs against the relator, the State board fixed upon a certain figure as covering the value of the tangible and intangible property together, and did not separately arrive at a valuation of the tangible and intangible parts respectively.

XX. That the tangible property of the relator company, the value of which was included in the assessment so made by the State board, had for many years previous to such assessment been entirely assessed by the local assessors in the city of New York.

XXI. That the defendants valued the property of the relator at what they deemed its full and fair value, taking into consideration the original report made by it to the board, subsequent supple-

mental or special reports, the report of the State railroad commissioners, the records of the State comptroller's office, the reports of the New York city department of assessment and taxes, and after consideration of information from experts retained by the board and of their confidential appraisers and special agents, and they also had before them the *Poor's Manual* and *Financial Chronicle*, and considered all of the elements, factors and considerations which they were enabled to gather from these sources. They based their valuation of the tangible property solely upon the cost of reproduction, with an allowance for depreciation.

Defendants considered, among other things, in arriving at their valuation of relator's property, the fact that it had the right, acquired from other companies, to operate other lines of street surface railroad, and that it operated such other lines; that the franchises of the relator were more or less valuable by reason of the acquisition of such right; whether the relator had contracts with another company to run over its lines; the fact of its having control and operation of leased lines.

They had before them and considered a map showing the entire system of the Brooklyn Rapid Transit Company. They con-
741 sidered the market value of its stocks and bonds for what it might be worth and not as conclusive or as an absolute measure of valuation. They considered the earning power of the property of the company as reported to them by it. They considered the tax rate in Kings county, also net and gross earnings, the character of the motive power used, the amount of percentage tax or license fee paid to the city. They also considered the value of real estate off the line of the road; the fact whether earnings were large or small, and assessed the special franchise at what the members of the board agreed was the full and fair value thereof.

That, in addition to these facts which were before the commissioners previous to the hearing of the relator, the commissioners had upon, and after said hearing, before them and considered the statements, evidence, affidavits and arguments upon such hearing for the purpose of arriving at their final conclusion as to the valuation of the special franchises of relator.

That, in assessing the special franchise of the relator, and in arriving at the valuation thereof, the defendants did not include in such assessment the valuation of any property except such as is in, above, upon, under and running through the public streets and public places of said city, including the franchises, rights, authority or permission to construct, operate and maintain its foundation, roadbed, substructure, superstructure, with their appliances in, upon, above, under or through said streets and public places. They did not include in such assessment or valuation the value of the right to be, or the franchise to be a corporation. They did not include the value of the good will of the business carried on by such corporation, nor did they include the value of any property other than that above stated and described as having been included by them. That such assessment as made of such special franchise of the relator includes

the value of the tangible and intangible property in the streets
742 of the city of New York, and was arrived at upon consideration of all the facts and circumstances affecting the value of such property, including the use or right to use such streets and public places which the defendants were able to ascertain.

XXII. The actual and true value of all the special franchises of the relator in the borough of Brooklyn as finally determined by the defendants, and as I find, is $7,608,184.

The actual and true value of all the special franchises of the relator in the borough of Queens as finally determined by the defendants, and as I find, is $1,879,445.

XXIII. Other real estate in the city of New York was assessed at only 67 per cent. of its actual and true value, and, therefore, to equalize the said assessments of the relator with the assessments of other real estate there should be deducted from the assessment of $7,608,184 in the borough of Brooklyn the sum of $2,510,700.72, and there remains the sum of $5,097,483.28 as the value of all the special franchises of the relator in the borough of Brooklyn for the purposes of assessment and taxation under the special franchise tax act; and there should be deducted from the assessment of $1,879,445 in the borough of Queens the sum of $620,216.85, and there remains the sum of $1,259,228.15 as the value of the special franchises of the relator in the borough of Queens for the purposes of assessment and taxation under the special franchise tax act.

XXIV. That the following is a correct statement of the assessed value of real estate in the State and in the city of New York, respectively, for the years hereinafter stated:

Total assessed real estate in State for 1899.....	$4,811,593,059
Total assessed real estate in State for 1900....	5,093,025,771
743 Total assessed value all special franchises in State for 1900.....	266,202,759
Total assessed value of tangible property for year 1899 included in the special franchises assessed in 1900 for whole State.....	96,061,902

Total assessed value of real estate in New York city, by boroughs, for 1899.

Manhattan and Bronx.....	$2,178,605,905
Kings.....	609,822,267
Queens.....	103,752,600
Richmond	40,264,692
Total	$2,932,445,464

Total assessed value of all real estate in the city of New York, exclusive of tangible property included in the special franchise, by boroughs, for the year 1900.

Manhattan and Bronx	$2,369,997,504
Kings	651,383,900
Queens	104,427,872
Richmond	42,723,924
Total	$3,168,533,200

Total assessed value of all special franchises in the city of New York, by boroughs, for the year 1900.

Manhattan	$166,763,669
Bronx	7,272,249
Brooklyn	36,743,057
Queens	6,544,312
Richmond	2,356,064
Total	$219,679,351

744 Total assessed value of the tangible property for the year 1899 included in the special franchises assessed in 1900 for the city of New York, by boroughs.

Bronx	$3,768,600
Brooklyn	18,048,775
Manhattan	50,428,750
Queens	2,935,600
Richmond	1,403,500
Total	$76,585,225

Conclusions of Law.

I. That chapter 712 of the Laws of 1899 is a valid and constitutional enactment, practicable and operative, and that it gave authority to the defendants to assess the relator's special franchise for the purposes of assessment and taxation.

II. That the relator had a hearing and due process of law before the defendants upon the review of their assessment on the tenth day of April, 1900, and was not there deprived of any of its legal or constitutional rights.

III. That the said assessments of the special franchises of the relator in the boroughs of Brooklyn and Queens, respectively, as made by the State board should be confirmed if they had been properly entered by the commissioners of taxes and assessments of the city of

New York upon the assessment-rolls of the real and personal property of the several parts of said city for the year 1900, but that by reason of the entry upon the assessment-rolls of said city for the borough of Brooklyn of both said assessments made by the State board for the boroughs of Brooklyn and Queens, the said assessment-roll for the borough of Brooklyn should be corrected by reducing
the assessment of the special franchise of the relator from the
745 sum of $9,487,629, being the total amount of the assessments of the special franchises of the relator in both boroughs of Brooklyn and Queens, as made by the State board, to the sum of $7,608,184, being the amount of the assessment of the special franchises of the relator in the borough of Brooklyn, as made by the State board, and to equalize such assessment with the assessment of other real property in the city of New York the relator is entitled to a further deduction of the sum of $2,510,700.72, and that the assessment as thus reduced, to wit, the sum of $5,097,483.28, must be taken as the value of the relator's special franchises in the borough of Brooklyn for the purpose of assessment and taxation under the act above referred to, and that the necessary corrections should be made to that end in the assessment-roll and tax books in the city of New York for the borough of Brooklyn.

I refuse to make the findings of fact and conclusions of law requested by the relator except as I have found or made them hereinbefore.

I accordingly direct that a final order be entered in this proceeding which shall order, adjudge and determine that said assessments are excessive and unequal in that other real property in the city of New York is assessed at 67 per cent. of its full value, whereas the special franchises of the relator are assessed at their full value; that the said assessments of the relator's special franchises in the borough of Brooklyn at the sum of $7,608,184, and in the borough of Queens at $1,879,445, for the year 1900, are each excessive and unequal; that the equalized valuation of such special franchises in the borough of Brooklyn, is and is hereby fixed at $5,097,483.28, and in the borough of Queens at $1,259,228.15, to which amounts the said assessments are hereby respectively corrected and reduced so as to make them conform to the valuations and assessments of other property upon the same rolls and to secure equality of assessment.

But the commissioners of taxes and assessments of the city
746 of New York having erroneously entered upon the assessment rolls for the borough of Brooklyn, the assessments made by the State board of the special franchises of the relator in both the boroughs of Queens and Brooklyn, at the total sum of $9,487,629, the total amount so entered on the assessment rolls for the borough of Brooklyn should be reduced to the said sum of $5,097,483.28, and as so reduced said assessment is confirmed; that upon payment by the relator to the receiver of taxes of the city of New York or other proper officer of the amount of tax due upon said equalized and corrected and reduced assessment of $5,097,483.28 less all sums required by law to be deducted therefrom, the said receiver of taxes

or other proper officer shall receive the same in full satisfaction of the tax appearing upon the assessment rolls of said city for the year 1900 against said special franchises and shall wholly discharge and cancel said tax.

Dated Albany, July 15, 1902.

D. CADY HERRICK,
Justice Supreme Court.

747 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* the Brooklyn City Railroad Company
against
STATE BOARD OF TAX COMMISSIONERS.
} Assessment of 1900, No. 32.

Findings of Fact and Conclusions of Law Requested by the Relator and Refused by the Judge.

Findings of fact so requested and refused.

I. In fixing and determining the valuation of the special franchises of the relator no rule, method or principle was followed or adopted by the State board.

II. The State Board of Tax Commissioners was unable to and did not devise or find any general rule, method or principle to adopt in making the various valuations and assessments of the special franchises of the relator, and was unable to and did not apply any
748 special rule, method or principle whatsoever in making any of said assessments or valuations in any particular case.

III. In valuing the special franchises of the relator the State board considered the market value of the share stock of the relator and the market value of the bonds of the relator as appreciating factors which entered into such valuation.

IV. In valuing the special franchises owned by the relator for the purpose of assessment, as aforesaid, the State board considered the amounts of the gross and net earnings derived from the operation of the system of street railways of the relater constituting its special franchises as appreciating factors entering into their valuation.

V. In valuing the special franchises owned by the relator for the purpose of assessment, as aforesaid, the State board considered the value of all the assets of the relator as an appreciating factor entering into their valuation.

VI. In valuing the special franchises of the relator, as aforesaid, the State board considered the value of the corporate assets of the company and of its good-will as appreciating factors entering into their valuation, and for that purpose fixed upon a certain sum as representing the value of the corporate assets of the company, including its good will.

VII. In valuing the special franchises owned by the relator for the purpose of assessment, as aforesaid, the State board considered as appreciating factors entering into their valuation the rights of the relator to operate cars over the lines owned by other corporations, which lines are operated as a part of the same system, the earning capacity of the corporation and its business methods, including the right to operate its cars over continuous routes owned by other companies and the transfer of passengers from one route to
749 another for a single fare, and the operation of the system as a whole, including the value of the business skill and personal management of such railroad system.

VIII. No basis for the determination of the value of the relator's special franchises is afforded by any of the following matters which were taken into consideration by the State board in valuing the special franchises of the relator, to wit, the market value of the relator's share stock; of its bonds; of the bonds issued by the several corporations which were consolidated or merged into or with the relator; the amounts of its gross and net earnings derived from the operation of the system of railways of the relator; the value of all the corporate or other assets of the relator; the value of the relator's good will; of its right to operate cars over lines owned by other corporations; of its earning capacity and the business methods and skill of the managers of the relator's property; its right to operate its cars over continuous routes owned by other corporations and over their special franchises which it leased or controlled; the right which the relator possessed to transfer passengers from one line or route of operation to another for a single fare; the right which the relator possessed to create and operate continuous routes of travel by the union of special franchises, some of which is leased and others which it controlled; the productive capacities of the system were the operation of the relator's system of railroads as a whole.

IX. It is impossible to ascertain what part of the market value of the share stock and bonds of the relator represents the value of the property other than special franchises.

X. There was no testimony or data before the State board which enabled it to determine what portion of the relator's gross earnings comes from the transportation of passengers over the special franchises owned by the relator and what portion thereof comes from other property owned by the relator, and it is impossible
750 to ascertain and determine what portion of such gross earnings comes from such several sources respectively.

XI. The consideration of gross receipts by this board as an element of value involves the including in their valuation of the personal elements of ability, business ingenuity, enterprise, management and financial connection.

XII. The consideration of each matter or circumstance as an appreciating factor in the State board's valuation of the special franchises of the relator other than the value of each special franchise as a separate and distinct entity, made the valuation of the special

franchises of the relator by the State board very much larger than it otherwise would have been.

XIII. The value of all the special franchises of the relator is materially and very much less than the sum at which such special franchises were assessed by the State board.

XIV. The special franchises of the relator have no ascertainable value beyond the value of the tangible property included in such special franchises, and the intangible property included in such special franchises is by its very nature incapable of valuation.

XV. The fee of the said streets on which the railroads of the relator are constructed is owned by private persons, to wit, the owners of the land at the time said streets were opened, or their grantees, successors or assigns.

XVI. The State board did not fix and determine said valuation of the special franchise of the relator by estimating the value of such special franchise separately and by itself.

The State board in assessing the special franchise of the relator took into consideration the value of all the property, rights,
751 privileges and franchises, including good will of the relator, but without assuming or undertaking to fix and determine, and without fixing and determining the value of all the relator's property, rights, privileges and franchises, including good will, and for that purpose took into consideration the value of the tangible property included in the special franchise of the relator; the market value of the bonds and shares of stock issued by the relator, the annual amount of the gross and net earnings, income and receipts of the relator from all sources; the value of its choses in action and all indebtedness to the relator; its good will, its franchise to be a corporation, its franchise to continue to act in a corporate capacity from year to year; the fact of the leasing and operation by the relator of the railroads of other railroad corporations, the fact that passengers were transferred with and without extra fare from the railroad owned and operated by the relator to other railroads leased and operated by the relator.

The State board did not fix and determine a valuation of any of the separate items of the property, rights, privileges, and franchises, including good will, which were taken into consideration by the State board as aforesaid, but all of the said items of property, rights privileges and franchises, including good will, were so taken into consideration as appreciating factors contributing to the total value so taken into consideration of all the property, rights, privileges and franchises, including good will of the relator.

The State board having thus taken into consideration the total value of all the property, rights, privileges and franchises, including good will of the relator, assumed and undertook to make allowances by way of deduction from such total value so taken into consideration for the good will of the relator; for the tangible property of the relator not included in its special franchises; for the value of its choses in action, and of the indebtedness to the relator, and
752 for its franchise to be a corporation; but without fixing and determining the value of any of said items of good will,

property rights, privileges and franchises so taken into consideration by way of deduction. The State board did not assume or undertake to make allowances by way of deduction and did not make allowance by way of deduction, for the franchise of the relator to continue from year to year to act in a corporate capacity; for its franchises to consolidate and merge with other corporations; for its franchises and contracts with other railroad corporations for the use by each of the railroads of the other, including the right acquired thereby to transfer and carry passengers without extra fare over and to and from the railroads leased and operated by it; nor for the right as against the owner of the fee of the street to construct, maintain and operate its railroads; and the State board thereupon assumed to make the said assessment of the special franchise of the relator as the result of the process of the aggregations and deductions aforesaid. By such process the State board included in its said assessed valuation of the special franchise of the relator the value of the other items of property, rights, privileges and franchises which, as aforesaid, were not taken into consideration by way of deduction; and the said assessed valuation of the special franchise of the relator included a valuation of the said items of property, rights, privileges and franchises not constituting a part of the special franchise of the relator, for which no allowance or deduction was made as aforesaid.

XVII. It is impossible to estimate even approximately what proportion of the market value of the shares of stock and of the bonds issued by the relator represents the value of the special franchise of the relator, and what proportion thereof represents the value of its other property and other franchises.

XVIII. The ordinance of the common council of the city of Brooklyn adopted on or about December 27, 1880, providing
753 that licenses should be granted to street surface railroad companies on payment of a license fee of $20 was authorized by the legislature and adopted by the said common council with the intent on the part of the legislature and of the common council, and for the purpose of increasing the revenues of said city, and not with the intent or for the purpose of providing for expenses of supervision, inspection or other care in the nature of police protection, and the amounts so paid by the relator in pursuance thereof were intended to be and were in fact taxes.

XIX. Each franchise, right or permission to construct, maintain and operate a street railroad in, along or upon any streets, together with the tangible property constructed, maintained and operated in pursuance of such franchise, right, or permission, and which on the second Monday of January, 1900, was operated by the relator, constituted a separate and distinct special franchise.

XX. Each of the street surface railroad corporations which were consolidated or merged with relator or whose property, rights, privileges and franchises were purchased or otherwise acquired by the relator, owned at least one such special franchise prior to such consolidation, merger, purchase or acquisition.

XXI. The total of the values of all of such special franchises of the relator, if each such special franchise should be valued as a separate and independent special franchise, is very much less than the value of all of such special franchises considered as a unit and as owned by a corporation having the right to operate all of such special franchises as one single railroad system, and the value thereof as one railroad system, is due very largely to the franchises to be a corporation, to continue as a corporation, to construct, maintain and operate street surface railroads generally, to merge or consolidate with other corporations, to contract with other railroad corporations for the operation by each of the railroads of either of the other,
754 in whole or in part, by lease, traffic contract or otherwise, by virtue of which franchises other than the franchise to construct, maintain and operate a street surface railroad in particular specified locations, the relator acquired the right to operate all of the aforesaid special franchises owned and operated by it on the second Monday of January, 1900, as a single railroad system.

XXII. All the special franchises owned by the relator on the second Monday of January, 1900, were operated as one railroad system. Continuous routes of travel had been established by the relator by uniting several special franchises into a single line of operation without regard to whether said special franchises so united were owned or leased by the relator. A system of transfers had been established by which passengers were transferred from one line of travel to another and were carried over long distances and over many special franchises in the boroughs of Brooklyn and Queens, for a single fare.

XXIII. Neither the State board nor any member thereof at any time personally visited or inspected the railroads, or any of the tangible property forming part of any of the special franchises of the relator, to aid them in arriving at their valuations of such special franchises.

XXIV. In valuing the special franchises of the relator the State board made one valuation to cover all special franchises of the relator and made one assesment of all special franchises together, and did not make a separate valuation or assessment of each special franchise, but treated all of such special franchises as a single franchise and valued them as a single special franchise.

XXV. In valuing for purposes of assessment as aforesaid the special franchises owned by the companies whose roads were
755 leased by the relator to other companies, the State board considered rentals agreed to be paid as appreciating factors of value, that is to say, the greater the sum agreed to be paid under the lease the larger the value which was placed upon the line covered by the lease.

XXVI. The said assessment of the special franchises of the relator in the borough of Queens was excessive by reason of overvaluation, and by reason of inequality as between the assessment of such special franchises and of other special franchises by said State board for said year in said boroughs of Brooklyn and Queens.

Conclusions of Law so Requested and Refused.

(1.) The assessment complained of by the relator is illegal in that the State board had no jurisdiction or authority to make the assessment for the reason that the statute, namely, chapter 712 of the Laws of 1899, under and pursuant to which the State board claims the power and authority to act in the matter and to fix and determine the valuation of the special franchises for the purpose of assessment, is in violation of section 2 of article X. of the Constitution.

(2.) Chapter 712 of the Laws of 1899 is unconstitutional in that it takes away from the local assessors of the city of New York a substantial portion of the functions of assessment, which they exercised at the time of the adoption of the constitution of 1846, and at the same time transfers the same to a State board not elected by the people of the city or appointed by local authorities.

(3.) Chapter 712 of the Laws of 1899 is unconstitutional in that it takes away from the local assessors of the city of New York a substantial portion of the functions which they exercised at the time of the adoption of the State constitution of 1894, and at the same time transfers the same to a State board not elected by
756 the people of the city or appointed by local authorities.

(4.) Under the provisions of chapter 712 of the Laws of 1899, the duty of the local assessors in relation to the assessment of special franchises made by the State Board of Tax Commissioners is merely ministerial.

(5.) The action of the local assessors in placing on the tax rolls the assessed valuation of special franchises as made by the State Board of Tax Commissioners is merely ministerial.

(6.) Under the provisions of section 47 of chapter 712 of the Laws of 1899, the tangible property forming part of the various special franchises of the relator is not taxable except under the assessment made as provided in said chapter by the State Board of Tax Commissioners.

(7.) Under the provisions of section 47 of chapter 712 of the Laws of 1899, local assessors are prohibited from assessing the tangible property which forms part of any special franchise taxable under said chapter.

(8.) Under the provisions of chapter 712 of the Laws of 1899, the exclusive power of valuing and assessing special franchises is vested in the State Board of Tax Commissioners.

(9.) It was the intention of the legislature, in enacting chapter 712 of the Laws of 1899, that the intangible part of any special franchise should be taxed upon an assessment made by the State Board of Tax Commissioners, or not at all.

(10.) All the parts of chapter 712 of the Laws of 1899 are so mutually connected with and dependent on one another, as to warrant the belief that the legislature intended them as a whole, and that,

if all could not be carried into effect, the legislature would not have passed the residue independently.

757 (11.) The purpose of chapter 712 of the Laws of 1899 is to accomplish a single object only, to wit, the taxation of special franchises upon assessments made by the State Board of Tax Commissioners, and all the provisions of the chapter are necessary to accomplish that object.

(12.) Those provisions of the statute, namely, chapter 712 of the Laws of 1899, which relate to the valuation and assessment of special franchises by the State Board of Tax Commissioners, cannot be eliminated from the statute without essentially changing its scope and operation, and defeating its general purpose.

(13.) If those provisions of the statute, namely, chapter 712 of the Laws of 1899, which require the valuation and assessment of special franchises by the State Board of Tax Commissioners, are invalid, the remainder of the statute is not capable by its own terms of being carried into effect, consistently with the intent of the legislature which enacted it.

(14.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, and the assessment made pursuant to it, are in violation of section 10 of article I. of the Federal Constitution, in that they impair the obligations of the contracts under the terms of which the relator company and its predecessors in title have for many years held their franchises to construct, operate and maintain street railroads in the city of New York.

(15.) Chapter 712 of the Laws of 1899 impairs the obligation of the contracts embodied in the franchise grants made by the State to the relator company and its predecessors in title and consented to by the municipality, and for this reason is unconstitutional and void.

(16.) The tax authorized by chapter 712 of the Laws of 1899
758 is to be laid on no property or right but the right to use the streets, and the tangible property in the streets connected with that right.

(17.) The right made taxable by chapter 712 of the Laws of 1899 is not the whole body of the relator's franchises, but merely the special right aforementioned to use the streets and the tangible property in the streets connected with the same.

(18.) The property made taxable by chapter 712 of the Laws of 1899 does not include the general corporate franchises of the relator, nor any of the personal property, nor the good will, of the relator, nor any of its real estate, except its special franchises.

(19.) The valuation of the special franchise, which by chapter 712 of the Laws of 1899, is to be fixed by the State board, is the intrinsic value of the right to use the streets, as granted, and of the tangible property in the streets connected with that right, and not the value of the use that is made of the right by the owner, nor the value of the profits derived from such use.

(20.) A special franchise has no ascertainable value as property, beyond the value of the tangible property in connection with it.

(21.) The value of the relator's franchise to use the streets cannot be separated from the value of its other property and rights used in its business.

(22.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, fails to prescribe any rule, method or principle of valuation for the special franchises sought to be taxed, and for this reason the statute violates the provisions of the Federal and State Constitutions, which prohibit the taking of property without due process of law.

(23.) The assessment is illegal in that it is impossible, from the nature of the object taxed, to supply any rule, method or
759 principle of valuation for the guidance of the assessors in valuing the special franchises sought to be taxed, and, for this reason, the statute, namely, chapter 712 of the Laws of 1899, violates the provisions of the Federal and State Constitutions, which prohibit the taking of property without due process of law.

(24.) The assessment is illegal because the statute, namely, chapter 712 of the Laws of 1899, is impossible of rational execution, in consequence of its failure to prescribe any rule, method or principle of valuation of the special franchises sought to be taxed, and must therefore be treated as a nullity, and an assessment under it is therefore in violation of both the Federal and State Constitutions.

(25.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, violates section 24 of article III of the constitution of New York, in that it fails to state definitely the object to which the tax is to be applied without referring to some other law to fix such object.

(26.) The assessment is illegal because the relator was refused the full and fair hearing to which it was entitled by the constitution of the State and Federal Constitution before final assessment could properly be made against it.

(27.) The assessment is illegal because the State board refused the relator the full and fair hearing provided for and contemplated by section 44 of article 2 of the tax law, the statute in such case made and provided.

(39.) The assessment is illegal because, in determining the valuation of the special franchises owned by the relator company as aforesaid, the board erred in considering the tax rate prevailing on real estate in New York county.

(40.) The assessment is illegal because, in determining the
760 valuation of the several special franchises owned by the relator on January 8, 1900, it was erroneous for the State board to consider as factors of value the market value of the share stock of the relator, the market value of the bonds of the relator, and the market value of the bonds of the several corporations which were consolidated as aforesaid into the relator.

(41.) The aggregate value of the bonds and share stock of the relator at their market prices represented all the property of every kind possessed by the relator and the good will of its business, and it is impossible to determine from such aggregate value or market

prices the value of the special franchises owned by the relator on the date aforesaid.

(42.) The assessment is illegal because, under the tax law of this State, the State board had no jurisdiction to value any property of the relator, except the special franchises owned by it, and had therefore no right to consider, as they did consider, as a factor of value of the special franchises, the fact that the relator owned other valuable property, and was in receipt of large earnings derived partly from the use of such other property, and partly from the operation of other special franchises which it held under leases, but which were owned by and assessed to other railroad corporations.

(43.) No basis for the determination of the value of the relator's special franchises is afforded by the consideration of the following matters (or any of them), that is to say: The market value of the share stock of the relator, the market value of the bonds of the relator, the market value of the bonds issued by the several corporations which consolidated with the relator; the amounts of the gross and net earnings derived from the operation of the system of railways of the relator; the value of all the corporate or other assets of the relator; the value of the good will of the relator; the
761 rights of the relator to operate cars over the lines owned by other corporations; the earning capacity of the relator and its business methods and skill; the methods of operation and the personal management of the relator's system of railways; the relator's right to operate its cars over continuous routes owned by other corporations and over their special franchises which it leased or controlled; the right which the relator possessed to transfer passengers from one route or line of operation to another for a single fare; the right which the relator possessed to create and operate continuous routes of travel by the union of special franchises, some of which it leased and others of which it owned; the productive capacity of the said system; and the operation of relator's system of railroads as a whole.

(44.) The State Board of Tax Commissioners, in this proceeding, having testified that, in making their valuation of the relator's special franchises, they considered, as appreciating factors of value, certain facts and circumstances connected with the relator's business, and with its corporate property and obligations and the market value thereof, it follows that their consideration of the said facts resulted in making their valuation larger than it would have been, had such facts not been considered by them.

(45.) The assessment is illegal for the reason that it is not the result of the application by the State board of any rule, method or principle of valuation whatever.

(46.) The assessment is illegal for the reason that the State board did not make a separate valuation of the tangible property connected with the special franchises on the basis of its cost of reproduction, but valued and assessed the tangible property, together with the intangible property, in one valuation and assessment.

(47.) Even were the assessment reduced by deducting thirty-three

per cent. thereof, for the purpose of correcting its inequality,
762 it would still be erroneous for over-valuation, because the State Board of Tax Commissioners, in valuing relator's special franchises, took into account, as appreciating factors of value, facts and elements which it was illegal for them to consider, and which afforded no basis for determining such value.

(48.) Even were the assessment reduced by deducting thirty-three per cent. thereof, for the purpose of correcting its inequality, it would still be erroneous by reason of over-valuation, because the State Board of Tax Commissioners, in valuing relator's special franchises, increased their valuation by considering as factors of value facts which they should have disregarded in determining such valuation.

(49.) Even were the assessment reduced to an amount which should bear the same ratio to the present assessment as the average assessment of real estate either in the city of New York or in the State of New York bears to the full value of such real estate in said city or State, the assessment would still be excessive and erroneous for over-valuation, because, in determining it, the State Board of Tax Commissioners increased their valuation of the relator's special franchises by considering elements of value which did not belong to such special franchises, with the result that their valuation included values which belonged exclusively to other property taxable under other laws.

(50.) Even if the assessment (for the purpose of correcting its inequality) were reduced to 67 per cent. of the said State board's valuation of relator's special franchises, the assessment would still be erroneous for over-valuation.

(51.) The inclusion by the State board in the final valuation on which their assessment of the relator's property has been based of any appreciating element or factor, the effect of which is incapable of pecuniary admeasurements, invalidates the entire assessment.

763 (52.) It is impossible to measure pecuniarily the effect on the valuation upon which the State board's assessment was based of the various appreciating factors, or any of them, which are found in this report to have illegally entered into the valuation as fixed by the State board.

(53.) The inclusion in the final valuation as fixed by the State board of the elements which were illegally considered as appreciating factors, has resulted in a material over-valuation of the special franchises of the relator.

(54.) Even were the assessment reduced for the purpose of correcting its inequality, it would still be erroneous because of over-valuation by reason of the fact that none of the special franchises of the relator has any ascertainable value (beyond the value of the tangible part thereof) apart from the other property, franchises and business of the relator, with which each special franchise has become inextricably interwoven.

(55.) The grant by the State with the consent of the municipality

to the relator company or its predecessors in title of each of its special franchises and the acceptance of the same by the grantee thereof constituted a contract within the meaning of section 10 of article I. of the Federal Constitution prohibiting States from passing laws impairing the obligations of contracts.

(56.) The facts proved in this case leave no room for doubt that a provision must be implied in all the contracts embodied in the franchise grants made by the State with the consent of the municipal authorities to the relator company or to its predecessors in title to the effect that the amount which the relator company or its predecessors agreed to pay in exchange for the franchise rights granted should not be subsequently increased by the exaction of additional taxes or otherwise.

764 (57.) It was the intention of the legislature in the enactment of chapter 65 of the Laws of 1886 entitled "An act to secure adequate compensation for the right to construct, maintain, use, operate or extend street railroads in cities and villages," and the amendments thereto, and in the enactment of the railroad law, so far as said law embodies said chapter and amendments, that all rights and franchises granted and acquired under and in pursuance of said statutes should be exempted from any further burdens or taxes than those to which the grantees of said rights and franchises became liable under the terms of the contracts embodied in the grants or which should otherwise be expressly required to be paid by laws in force when such franchises should be granted.

(58.) Prior to or about the year 1890, the policy of the State, as expressed in its legislation, was to prevent a consolidation of parallel street railroad lines; subsequent to such date, the policy of the State, as evidenced by new legislation, was changed so as to encourage and promote the consolidation of such railroads and the joint operation of competing street surface lines by corporate merger, traffic contracts or leases, upon the basis of and in exchange for the extension of transfer facilities over the routes of contracting companies without an increase of fare.

(59.) Upon the basis of these franchise grants and upon the basis of existing law, and in acceptance of the offer of the State as expressed upon the face thereof, the relator company has expended many millions of dollars in developing and improving its service and for transfer facilities obligatory upon it under its franchise grants, the same having a cash value of a million dollars and upward in each year, and constituting a part of the consideration, moving from it to the State and municipality under the contract created by the acceptance of the offer aforesaid.

(60.) At all times when the various street railroad franchises owned by the relator were granted, it was a rule of property

765 in this State that neither the State nor the municipality could lawfully impose any further burdens or taxes on such franchises beyond those expressly reserved in the statutes and ordinances granting or consenting to the same and those required to be paid by the laws in force at the times such franchises were granted.

(61.) Each and every of the street railroad franchises owned by the relator was acquired and accepted by the grantees thereof in reliance upon the said rule of property, and the rights conferred by the said franchises are property rights based upon the said rule of property, and where acquired upon the faith of the same, and cannot now lawfully be disturbed by imposing any further tax or burden upon said franchises or any of them.

(62.) A perfected railroad franchise constituted either by direct legislative grant or by consent of the local authorities and property-owners in pursuance of the constitution and general laws, or confirmed thereby, especially when followed by actual construction and operations, is a property right that cannot be afterwards taken away or diminished either by constitutional amendment or by legislative or municipal action, except in the exercise of the police power or the right of eminent domain.

(63.) The rights to construct, maintain and operate street railroads over streets and public places in the city of New York, owned by the relator, having been constituted either by direct legislative grant, or by consent of the local authorities and property-owners in pursuance of the constitution and general laws, and having been followed by actual construction and operation, are property rights that cannot be taken away or diminished by legislative or municipal action, except in the exercise of the police power or the right of eminent domain.

766 (64.) The railroad franchises owned by the relator cannot be taken away or diminished nor the burdens upon them increased by additional taxation or otherwise, except in the exercise of the police power, or right of eminent domain.

(65.) The taxation of the special franchises of the relator under the provisions of chapter 712 of the Laws of 1899, is a diminution of the relator's property in the said special franchises, and is illegal because it is the taking away of property without compensation or due process of law.

(66.) The assessment is illegal because each special franchise owned by the several corporations which consolidated as aforesaid, and by such consolidation created the relator, was a special and distinct property, and for the purpose of assessment and taxation should be treated as a separate piece of real estate and valued as such; and in treating all the special franchises which were owned by the relator on January 8, 1900, as a single franchise, and valuing them at a single gross sum, the respondents violated the provisions of the statute, to wit, section 42 of article II. of the general tax law, which required them to value each special franchise subject to assessment in each city, town or tax district.

(67.) Each right to construct, maintain and operate a street railroad, which right was owned by any one of the corporations which consolidated into the relator, together with the railroad which such corporation, prior to such consolidation, had constructed upon and along the streets and public places over which it possessed such right, constituted, prior to such consolidation, a separate special fran-

chise, as the same is defined in section 2 of chapter 712 of the Laws of 1899.

(68.) Each right to construct, maintain and operate a street railroad, which right was owned by any one of the corporations which consolidated into the relator, together with the railroad which such corporation, prior to such consolidation, had constructed upon
767 and along the streets and public places over which it possessed such right, constituted after such consolidation, and has ever since constituted a separate special franchise, as the same is defined in section 2 of chapter 712 of the Laws of 1899.

(69.) Each of said separate special franchises is a separate and distinct parcel of land or real estate, as the same is defined in section 2 of article 1 of the general tax law of this State.

(70.) Each of the separate special franchises formerly owned by the street railroad corporations (or any of them) which consolidated into the relator company, and which special franchises are now owned by the relator, is a separate parcel of real estate, and its valuation for the purposes of chapter 712 of the Laws of 1899 should have been fixed and determined separately by the State Board of Tax Commissioners, if any valuation or assessment whatsoever of such special franchises could have been legally or constitutionally made by said board.

(71.) The vesting in the relator of the title and ownership to and of the said separate special franchises, did not take from them the character of separate and distinct pieces of real estate, within the meaning of section 2 of article 1 of the general tax law.

(72.) The operation by the relator of any of the said special franchises in combination with other special franchises did not take from such special franchises so operated the character of separate and distinct pieces of real estate.

(73.) Under the provisions of chapter 712 of the Laws of 1899, if valid, it was the duty of the State Board of Tax Commissioners to fix and determine a separate and distinct valuation of and for each of the eighteen special franchises of the relator.

(74.) Each of the special franchises of the relator is subject
768 to the same conditions, liens and encumbrances to which it was subject prior to the time when the title to such franchise became vested in the relator.

(75.) The State board having valued all the special franchises of the relator as one, and having fixed and determined one aggregate valuation for the same, the entire assessment entered upon said valuation, if at all valid, became a lien upon each and all of the relator's special franchises, which lien was prior and superior to the lien of any mortgage which theretofore encumbered any of the relator's special franchises.

(76.) The assessment of the relator's special franchises is illegal, because, in determining the valuation of the several special franchises owned by the relator on January 8, 1900, it was erroneous for the State board, as they did, to consider as factors of value the gross and net earnings of the relator, as such earnings were derived, to a

large extent, from the operation of special franchises not owned by the relator, but which were owned by and assessed to other railroad corporations.

(77.) The assessment is further illegal in that all the special franchises owned by the relator company are assessed collectively as one special franchise, instead of each special franchise being assessed separately.

(78.) The provisions of the charter of the city of Brooklyn, first enacted by chapter 564 of the Laws of 1880, and afterwards re-enacted by chapter 583 of the Laws of 1888, chapter 378 of the Laws of 1897, and chapter 466 of the Laws of 1901, and the provisions of the ordinance of the city of Brooklyn adopted in pursuance thereof, by the common council of said city, together authorizing and requiring the annual payment by the relator to the city of Brooklyn and to its successor, the city of New York, of the sum of twenty dollars for each railroad car used on its railroad, and providing that such payment should "be taken in full satisfaction for the use of the streets," meant that
769 such payment should be taken in full satisfaction of all impositions, claims or demands of like general nature or character, upon, or for, or on account of, the franchise, right or privilege to use the streets. Such statutes and ordinances were intended to be, and were, enacted and adopted for the purpose of raising revenue and not for the purpose of paying the expenses of examination into the qualifications of the railroad companies or of their employees, nor of inspection, supervision or of other service in the nature of police supervision of such railroad cars or the operation thereof; but such annual payments were intended to be and are taxes or in the nature of taxes and not license fees as distinguished from taxes. The provisions of said statutes and ordinance constituted an offer on the part of the State and of said city that such annual payments should be taken in full satisfaction of all taxes or impositions, claims or demands in the nature of taxes upon, or for or on account of, the right, franchise or privilege of the relator to use the streets, except as to the obligations of the relator to keep the streets or any part thereof in repair; and the acceptance by the relator of such statutes and ordinances constituted the execution of a contract accordingly between the State, the said city and the relator, and such contract was referred to and confirmed and ratified by each written instrument annually executed and delivered by said city to the relator, providing that the relator might run its cars on the streets in said city "under the provisions of the contract of the relator with said city;" and the annual payment by the relator to the city of Brooklyn until January 1, 1898, and thereafter to the city of New York, constituted a contract annually executed and performed between the State and the city of Brooklyn, and its successor, the city of New York, of the one part, and the relator, of the other part, to the effect that such annual payments should be and were taken each year in

full satisfaction for all taxes, impositions, claims or demands
770 in the nature of taxes to be imposed upon or demanded or collected from the relator by the State and said cities for or on account of the right, franchise and privilege of the relator to use the streets except as to the obligations of the relator to keep the streets or any part thereof in repair.

The assessment and taxation of the intangible franchise, right and privilege of the relator to use the streets during the year in question would be a violation of the said contract between the State, the city and the relator, and would impair the obligation of such contract. Therefore, chapter 712 of the Laws of 1899, is not applicable to the situation of the relator for the purpose of authorizing the assessment or taxation of the intangible property included in the special franchise of the relator.

(79.) Assuming chapter 712 of the Laws of 1899 to be otherwise constitutional, valid, operative and enforceable, it is applicable to the situation of the relator only for the purpose and to the extent of authorizing the assessment and taxation of only the tangible property included in the special franchise of the relator.

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771 Supreme Court. Albany County.

PEOPLE *ex Rel.* BROOKLYN CITY RAILROAD Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Assessment of 1900. No. 32.

Relator's Exceptions to Judge's Findings and Refusal to Find as Requested.

The relator herein, saving and reserving all objections to the manner and form of the findings of fact and conclusions of law of the judge herein not herein precisely and exactly specified, files the following exceptions to the same:

(1.) The relator specifically excepts to the judge's twenty-first finding of fact and to each and every part thereof, and without limiting this exception further specifically excepts to so much of said thirty-fourth finding as finds that the respondents considered the market value of the relator's stocks and bonds for what it might be worth and not as conclusive or as an absolute measure of valuation, further specifically excepts to so much of said finding as finds that
the respondents in assessing the special franchise of the re-
772 lator, and in arriving at the valuation thereof, did not include in such assessment the valuation of any property except as is in, above, upon, under or running through the public streets and public places of said city, including the franchises, rights, authority

or permission to construct, operate and maintain its foundation, roadbed, substructure and superstructure, with their appliances in, upon, above, under or through said streets and public places; and further specifically excepts to so much of said finding as finds that the respondents did not include in such assessment or valuation the value of the right to be, or the franchise to be, a corporation; and further specifically excepts to so much of said thirty-fourth finding as finds that the respondents did not include the value of the good-will of the business carried on by such corporation, nor did the respondents include the value of any property other than that stated and described in said finding as having been included by them, and further specifically excepts to so much of said finding as finds that such assessment as made by such special franchise of the relator includes the value of the tangible and intangible property in the streets of the city of New York, and was arrived at upon consideration of all the facts and circumstances affecting the value of such property, including the use or the right to use such public streets and public places which the respondents were able to ascertain.

(2.) The relator specifically excepts to the judge's twenty-second finding of fact, and to each and every part thereof; and further specifically excepts to so much of said finding as finds "that the actual and true value of all the special franchises of the relator, in the borough of Brooklyn, as finally determined by the defendants and as I find is $7,608,184. The actual value of all the special franchises of the relator, in the borough of Queens, as finally determined by the defendants and as I find is $1,879,445," both as a finding of fact and as an implied conclusion of law, and relator specifically excepts to such implied conclusion of law as found by the judge, and to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

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(5.) The relator specifically excepts to the judge's 23d finding of fact, and specifically to so much of said finding that finds or implies that the value of the relator's special franchises in the borough of Brooklyn is $7,608,184, and that the sum to be deducted is $2,510,700.72, and that $5,097,483.28 is the value of the relator's special franchises in the borough of Brooklyn for the purpose of assessment and taxation under the special franchise tax act, and that the value of the relator's special franchises in the borough of Queens is $1,879,445, and that the sum to be deducted is $620,216.85, and that the sum of $1,259,228.15 is the value of the relator's special franchises in the borough of Queens for the purpose of assessment and taxation under the special franchise tax act. The relator, however, does not except to so much of said finding as finds or implies that other real estate in the city of New York was assessed at only 67 per cent. of its actual and true value, and that to equalize the relator's assessment with the assessment of such other real estate a deduction of 33 per cent. should be made from the actual value.

(6.) The relator specifically excepts to the 1st conclusion of law as found by the judge, and as to the whole thereof, as against the evi

dence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(7.) The relator specifically excepts to the 2d conclusion of law as found by the judge, and as to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(8.) The relator specifically excepts to so much of the 3d
774 conclusion of law found by the judge, finds that the assessments should be confirmed, and that the assessment of $5,097,483.28 must be taken as the value of the relator's special franchise in the borough of Brooklyn, as against the evidence, contrary to the evidence, against the weight of evidence and unsupported by the evidence. But the relator does not except to so much thereof as finds or implies that the relator is entitled to a deduction from the actual value of its special franchise for the purpose of equalizing its assessment with the assessment of other real property in the city of New York, and that the relator is entitled to a deduction from its assessment as entered on the assessment rolls of the city of New York, in the borough of Brooklyn, of the value, as assessed by the State board, of its special franchises in the borough of Queens.

(9.) The relator specifically excepts to the judge's refusal to find each of the proposed findings of fact and each of the proposed conclusions of law requested by the relator and refused by the judge.

SHEEHAN & COLLIN,
Attorneys for Relator, No. 32 Nassau Street,
New York City.

To John Franey, Esq., county clerk. Hon. John C. Davies, attorney-general, attorney for respondents.

775 *Final Order.*

At a special term of the supreme court of the State of New York, held in and for the county of Albany, at the county court-house, in the city of Albany, on the 15th day of July, 1902.

Present: Hon. D. Cady Herrick, justice.

PEOPLE *ex Rel.* BROOKLYN CITY RAILROAD Company *against* THE STATE BOARD OF TAX COMMISSIONERS.	Assessment of 1900. No. 32.

A writ of certiorari having heretofore been duly allowed in this proceeding pursuant to provisions of article XI. of the tax law as amended by chapter 712 of the Laws of 1899, upon the verified petition of the relator herein to review the action of the State Board of Tax Commissioners in assessing the special franchises of the relator; proof of due service on the said commissioners of the said writ,

together with copies of the petition on which it was granted and of the order directing the said writ to issue having been made and filed; the said State Board of Tax Commissioners having made a return to said writ; an order of reference having been made herein and entered in the office of the clerk of Albany county, on the 18th day of April, 1901, by which it was referred to Hon. Robert Earl to take and report to this court such evidence upon the several issues of fact raised by the petition, writ and return herein, as might be adduced before him by either of the parties hereto with his
776 findings of fact and conclusions of law, and the said referee pursuant to said order having filed his report in the office of the clerk of Albany county on the 15th day of July, 1902, and exceptions having been duly filed thereto, and upon the coming in of said report, this proceeding having been brought on for a hearing and trial and final determination before this court, upon due notice to all appearing herein, upon the evidence and proceedings so reported, together with the exceptions to the findings of fact and conclusions of law of the said referee, and after hearing counsel for the relator and respondents respectively, and no further evidence being adduced by either party and further findings of fact and conclusions of law having been requested, and this court having duly rendered and filed its decision in writing herein and the relator having duly filed exceptions thereto:

Now, upon the said petition, order directing said writ to issue, writ, return, order of reference, report, decision, and all the papers and proceedings heretofore had herein, and upon motion of the attorney-general,

It is hereby ordered, adjudged and determined that said assessment is excessive and unequal in that other real property in the city of New York is assessed at 67 per cent. of its full value, whereas the special franchise of the relator is assessed at its full value; that the said assessments of the relator's special franchises in the borough of Brooklyn at the sum of $7,608,184, and in the borough of Queens at $1,879,445, for the year 1900, are each excessive and unequal; that the equalized valuation of such special franchises in the borough of Brooklyn is and is hereby fixed at $5,097,483.28, and in the borough of Queens at $1,259,228.15—to which amounts the said assessments are hereby respectively corrected and reduced so as to make them conform to the valuations and assessments of other property upon the same rolls and to secure equality of assessment. But the commissioners of taxes and assessments of the city of New
777–810 York having erroneously entered upon the assessment-rolls for the borough of Brooklyn the assessments made by said State board of the special franchises of the relator in both the boroughs of Queens and Brooklyn at the total sum of $9,487,629, the total amount so entered on the assessment-rolls for the borough of Brooklyn should be reduced to the said sum of $5,097,483.28, and as so reduced said assessment is hereby confirmed; that upon payment by the relator to the receiver of taxes of the city of New York or other proper officer of the amount of tax due upon said

equalized and corrected valuation, less all sums required by law to be deducted therefrom, the said receiver of taxes or other proper officer shall receive the same in full satisfaction of the tax appearing upon the assessment-rolls of said city for the year 1900 against said special franchises and shall wholly discharge and cancel said tax.

Enter,

D. CADY HERRICK, *J. S. C.*

811 *Opinions.*

State constitution.

EARL, *Referee:*

I think it will be most convenient to consider in separate opinions the points relating to the validity of the special franchise tax law, and I will, therefore, in this opinion confine myself to the contention of the relators that the law violates the home-rule provisions of the constitution. Those provisions, as found in the constitution of 1894, in section 2, of article 10, and copied from the constitution of 1846, are as follows: "All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct." The claim is, that the legislature could not take their essential functions from these local officers as they existed at the time of the adoption of the constitution and transfer them to State officers appointed by the governor, as provided in the special franchise tax act, chapter 712, Laws of 1899. It is there enacted that the terms "land," "real estate," "real property," as used in the tax laws, shall include, among other things, all structures on, over, under or through streets, "including the value of all franchises, rights or permission to construct, maintain or operate the same, in, under, above,
812 on or through streets, highways, or public places," and that such a franchise, for the purpose of taxation, shall be known as a "special franchise;" that a special franchise shall be deemed "to include the value of the tangible property of a person, co-partnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise;" and that "the tangible property so included shall be taxed as a part of the special franchise." It was made the duty of the State Board of Tax Commissioners annually to fix and determine the valuation of each special franchise subject to assessment in each city, town, village or district and to file within the time specified with the clerk of such city, town or village a written

statement of the valuation of each special franchise in such city, town, village or tax district as fixed and determined by such board, and that the valuation so fixed shall be the assessed valuation on which all taxes, based on such special franchise in such city, town or village for State, municipal, school or highway purposes, shall be levied during the ensuing year; that each city, town or village clerk shall, within five days after the receipt by him of a statement of the assessment of a special franchise by the State Board of Tax Commissioners, deliver a copy of such statement, certified by him, to the assessors or other officers charged with the duty of making local assessments in each tax district in such city, town or village, and that the valuation of a special franchise as so fixed by the State Board of Tax Commissioners shall be entered by the assessors or other officers in the proper column of the assessment-roll. Provision is made for the review of assessments so made by a writ of certiorari directed to the Board of State Tax Commissioners and not to the local assessors, and an adjudication in the proceeding instituted by such writ is made binding upon the local assessors and upon the local collectors of the taxes as if they had been parties to the proceeding. The taxes thus imposed are to be collected and disposed of like other taxes upon the same assessment-roll.

813 The very able and exhaustive arguments made before me upon this constitutional question show that much is to be said upon both sides of the question, and that at least expressions can be found in reported opinions to sustain the contention of each side. In examining the many cases to which my attention has been called, I must bear in mind the admonition contained in the opinion of Chief Justice Marshall in Cohens *vs.* Virginia (6 Wheat., 264–399) as follows: "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the cases in which those expressions are used." There is also a rule, many times announced by judges, that the legislative will is not to be thwarted as in conflict with the constitution, unless such conflict is clear and undoubted, and that whenever an act of the legislature can be so construed and applied as to avoid conflict with the constitution and give it the force of law such construction should be adopted. The legislature has supreme legislative power, except as such power is limited in the Federal or State Constitutions, and we must be able to point to some unmistakable constitutional limitation before such power can be curtailed. A further rule must, however, also be observed, that a thing within the intent of the constitution, if that intent can be gathered from the instrument itself, considered in all its parts, or from the history connected with it, of which a court can take notice, is for all purposes to be regarded as within its words and terms; and that the plain purpose of the constitution will not be thwarted by a too close adherence to its letter. By the observance of these rules courts will avoid the two extremes of a too liberal and of a too strict construction of the constitution.

My attention has been called to no decision in this State or any

other State which absolutely dominates this case, and I must look through all the cases which may have some analogy to this and find, if I can, considering the reasons and the public policy
814 upon which the home-rule provisions in the constitution are based, and, comparing those provisions with the act of 1899, some reasons or rules which may guide me to a correct conclusion.

The system of home rule for local divisions of the State has come down to us from remote times. It was introduced into this country by the earliest colonists after centuries of struggle in England for its development and establishment there. Upon its vigorous existence depends the successful working of our republican institutions, and it has always been sedulously guarded by our wisest statesmen.

At no time in the history of our State was the idea of home rule by the people more dominant among our statesmen than at the time of the adoption of the constitution of 1846. By that instrument many offices theretofore filled by appointment were to be filled by elections by the people. The system of small senatorial, assembly and judicial districts was inaugurated, and the aim was to bring power home closely to the people as its purest and safest depository. As has been often said by judges, the constitution was not a new system of government, but it was designed to embody and conserve institutions which the people had developed, to which they were habituated and which they had found most beneficent in operation and most conducive to their welfare.

In some cases the framers of the constitution named local officers and specified the mode of their election, as in section 17, article 6, and section 1, article 10, in reference to justices of the peace, sheriffs, county clerks and district attorneys. The functions of those officers were not specified, but it was not designed that they should exist without functions. An officer without office, duty, function, power, would, in fact, be no officer. The purpose was not only to provide for the election of those officers, but, in conserving home rule,
815 to clothe them with the general functions which, in the whole history of our State down to the adoption of the constitution they had exercised. As those officers are named in the constitution, they have been called constitutional officers, and their offices cannot be abolished by the legislature. Their functions may be regulated and increased and they may also be diminished, but not so as to impair their usefulness and efficiency as local officers; and so it has been decided by the courts of this State. The constitution of 1821 provided that "sheriffs and clerks of counties, including the register and clerk of the city and county of New York, shall be chosen by the electors of the respective counties." By an act of the legislature in 1843 certain judges of the court of common pleas in the city and county of New York were authorized to appoint the clerk of that court, and in Warner *vs.* *The People* (2 Denio, 272) it was held that that act was unconstitutional, on the ground that it took from the county clerk the substance of his office and transferred his most important duties to an officer to be appointed by judges

and not chosen by the people; and all that was said in the opinion written in that case has reference to such a state of facts. In The People *vs.* Keeler (29 Hun [Supreme Court Reports], 175) the act, chapter 251 of the Laws of 1882, was under consideration. The act provided that the Albany County penitentiary should thereafter be the county jail of the county, and it required the sheriff to remove the prisoners from the building, then occupied as a jail, to the penitentiary. It made the superintendent of the penitentiary, who was appointed by the board of supervisors, the jailor, and gave him the custody and control of all persons confined therein. The act was assailed as unconstitutional, and it was held that, in so far as it deprived the sheriff of the custody and control of the jail and the prisoners therein and gave such custody and control to the superintendent of the penitentiary, it deprived the sheriff of common law powers and duties pertaining to his office and violated the constitutional provision requiring sheriffs to be elected by the
816 electors of the county. Here, again, the functions transferred to the new officer were some of the most substantial and important pertaining to the office of sheriff, without which he could not discharge many of the duties which had always theretofore attached to his office. Speaking of this case in 99 New York, 583, Judge Finch said that "the powers and duties of the sheriff were so curtailed or destroyed as practically to subvert his office and bestow it on another."

Justices of the peace at the time of the adoption of the constitution of 1846 and for many years thereafter, were a majority of the board of town auditors, and it was their duty, with the supervisor and town clerk, to audit all accounts against the towns of which they were officers. This duty was taken away from them at one time and conferred upon a board of town auditors elected at the town meetings. This act took away from them very important functions and transferred them to other officers, and yet, so far as I know, the act was never challenged on constitutional grounds. So, in 1846, and before and afterward, justices of the peace constituted the board of excise of their town. This function of granting licenses to keep hotels and sell intoxicating liquors was a very important one, and yet, by the excise act of 1896, this function was taken from them and transferred and vested elsewhere. That act came under consideration in the case of The People *vs.* Murray (149 N. Y., 367), and, while it was assailed on other constitutional grounds, there was no suggestion that it violated the constitution by taking away from justices of the peace some of the functions which they had for a long time exercised. So an act passed in 1857 constituted a board of county excise commissioners in each county and transferred to it the functions previously exercised by the town excise board, composed of justices of the peace, and later excise commissioners were elected at town meetings, and the function of granting liquor licenses was vested in them. Justices of the peace, for many years before
817 1846, and afterward, were in all the towns of this State inspectors of election at town meetings, but now that function

has been taken away from them and conferred upon others in many towns in this State. None of these acts, so far as I know, was ever assailed as unconstitutional in that important functions were taken away from justices of the peace and transferred to other officers. Those acts interfering with important functions of justices of the peace, as they had been exercised for many years prior to 1846, left those officers with their most material functions and did not materially interfere with the system of home rule intended to be entrenched in the constitution.

In People *vs.* Howland (155 N. Y., 270), portions of the act, chapter 22 of the Laws of 1896, were assailed as unconstitutional on the ground that they deprived the justices of the peace of the town of Fort Edward of their constitutional functions. The act provided for the election at town meetings of a police justice, who was to receive a salary and have all the jurisdiction of a justice of the peace in criminal matters, and also for the election of a police officer, as a town officer, who was also to receive a salary and have all the functions of a town constable in criminal matters. The act then provided that no justice of the peace in that town should be compelled to issue process of any kind in any criminal matter, and that if he did do so he should receive no compensation therefor, and that no sheriff, under sheriff, deputy sheriff or constable should be compelled to execute any criminal process issued by any of the justices of the peace of the town, and if they did do so, they were to have no compensation. The town justices were, therefore, left with all their jurisdiction in criminal matters unimpaired, but not obliged to act, and if they did act, they were denied all compensation, and none of the executive officers named were obliged to execute their criminal mandates. The provisions of the act assailed were held to be unconstitutional by a divided court. The real ground of the decision
818 is a little uncertain, but I think the effect of the decision is that the legislature attempted, by indirection and in evasion of the constitution, to deprive justices of the peace, constitutional officers, of all their criminal jurisdiction which they had always had, and thus *pro tanto* to abolish the office, and that, as it could not wholly abolish the office, it could not abolish such a substantial part of it.

Supervisors are constitutional officers, article 3, section 26, of the present constitution, and so they were under the constitution of 1846. They are town officers, and, as members of the board of supervisors, also county officers. The act, chapter 89 of the Laws of 1901, came under consideration in the case of The People *ex rel.*, etc., *vs.* The Board of Supervisors of Oneida County, recently decided. The act appointed certain commissioners who were authorized to sell the present court-house and county clerk's office in that county and to acquire a site and build a suitable building thereon for the use of the county as a court-house and for other public purposes, at an expense not exceeding $350,000. The act commanded the supervisors to provide the money needed to meet all the expenditures of the commissioners under the act. The sole question of any impor-

tance involved in the case was the validity of the act under the home-rule provisions of the constitution, and Judge Andrews, presiding at the special term, in a very able opinion, held the act to be constitutional. He said: "Supervisors are constitutional officers. Their rights and duties generally are such as had for many years existed at the time the constitution was adopted, and a law which deprived them of all their powers would, doubtless, be invalid. But, on the other hand, the legislature may, to some extent, modify and regulate those powers. The test is whether the act called in question is an attempt to evade the fundamental law, or whether it is merely a permissible modification of the supervisors' duties (People *vs.* Keeler, 29 Hun., 175; Astor *vs.* The Mayor, 62 N. Y., 567; Matter of Ap-
819 plication of the Mayor, 99 N. Y., 570). A statute depriving a board of supervisors of the power to build a certain court-house seems to me to belong to the latter class. It is a power that in the nature of the case may be seldom exercised by the board, and even when this power is taken away the board remains, substantially, the board of supervisors." The judgment ordered by Judge Andrews was unanimously affirmed in the appellate division upon his opinion, and also by the court of appeals. It is quite true that a board of supervisors under the general laws does not often have occasion to build a court-house or other county building, but its power to do so is to be exercised whenever the exigency arises. The fact that it is rarely called upon to exercise the power can have no bearing upon the constitutional question, except to show that the transfer of the power to other officials, leaving it with all its other functions, is not a substantial invasion of its constitutional prerogatives, or a substantial impairment of the system of home rule intended to be guarded in the constitution.

In The City of Syracuse *vs.* Hubbard (64 App. Div., 587) the facts were these: The city, in the year 1899, incurred liabilities in excess of the appropriations and the charter limitations. Under its charter it was not liable for the excess, and its then auditing body, the common council, was prohibited from auditing or paying the same. The act, chapter 402 of the Laws of 1901, was, therefore, passed authorizing and directing the defendants designated in the act to audit all outstanding claims against the city which were incurred in 1899 and which the city was legally or equitably obligated to pay. The act was assailed as in violation of the home-rule provision of the constitution now under consideration. The claim was that the auditors named in the act were, in a real sense, city officers, as they performed exclusively city functions, which, in that city, had always been discharged by officers elected or appointed in the locality.

The learned judge, writing the opinion, said: "The power of
820 audit conferred upon the defendants, and which, if anything, made them city officers, was beyond the auditing power possessed by the common council in 1899, or at the time of the adoption of the constitution. So that if the existence of the office, as a city office, is to be determined by the functions of the new officer (People *vs.* Pinckney, 32 N. Y., 377–382), it did not exist at the time the consti-

tution took effect, and the restriction upon the legislature would not apply." Then, after citing Astor *vs.* The Mayor and other authorities, he said: "These authorities give support to the proposition that if the legislature in providing for the accomplishment of a particular specific object which it has power to accomplish designates some person to perform a specified duty that might be performed by a local city or town officer, the fact that such person is charged with that duty does not make him a city or town officer within the meaning of the constitution so long as the general duties or functions of the local officers are not interfered with." There the claims to be audited were such as the local auditors never had authority to audit, although they had the general function of auditing. Here the local assessors never had the authority to assess these franchises, although they had the general functions of assessing property, and the special franchise tax act left those functions untouched. The ground of that decision must be that in such a case there is no material or substantial invasion of home rule, and that thus the constitution has not been violated.

In section 2, article 10, above quoted, the constitution does not specify any city, town or village officer by name, and the provision was not for the benefit of any officer, but for the benefit of the municipalities. There had always been in this State down to the adoption of the constitution certain municipal officers elected or appointed in the municipalities whose general functions were well understood. It was not the purpose of the framers of the constitution to perpetuate those officers, but their purpose was to
821 perpetuate their general functions for the purposes of home rule in the possession of officers, by whatever name known, elected or appointed in the locality. The offices of assessors, collectors and commissioners and overseers of highways, overseers of the poor and other local officers in cities, towns and villages could be abolished, and their general functions transferred to other officers under different names, but upon the sole condition that such new officers should be locally elected or appointed as provided in the section. So long as such functions remained strictly or substantially local so that the officer discharging them would, in fact and substance, be a local officer, they could not, by any legislative subterfuge, be transferred to any officer appointed by the governor or the legislature, or by any authority outside of the locality.

The assessment of property for the purpose of taxation has always in this State been a function of local officers elected or appointed in the locality where they discharged their duties, and this system of assessment is entrenched in the constitution to secure to the people the home rule to which they had always been accustomed, and of which the people of our race have always been tenacious. The constitution does not concern itself with these officers or even with their functions, except as they conduce to home rule. The end aimed at is home rule, and so long as any act of the legislature does not substantially impair the right of home rule, there being no other objection, it cannot be successfully assailed. These views, I think, are sustained

by the decisions in this State. In The People *vs.* Draper (15 N. Y., 532) the section of the constitution now under consideration was very thoroughly discussed by very able judges. In that case the validity of the metropoliton police act was challenged, which combined the four counties of New York, Kings, Richmond and Westchester, and provided for the appointment by the governor of five police commissioners, who, with the mayors of New York and Brooklyn, were to have the appointment and control of the
822 police force of the entire district. The court held that the commissioners thus appointed were not city officers, and that, therefore, the section of the constitution above quoted was not violated. That case held, in effect, that district officers or even State officers could be appointed by the governor to discharge some important functions in cities which had before been discharged by city officers. It has been several times followed and frequently cited as authority by the courts of this State, and, although it has been criticised, it has never been overruled. Its reach should not be extended beyond the precise case then before the court. The legislature, for police purposes, combined into a district contiguous territory inhabited by people largely having common interests and business relations, whose welfare and safety it was supposed would be promoted by a common police force under one head. The municipalities were left with all their other powers, and that act was held not substantially to invade the right of home rule belonging to them.

In People *vs.* Pinckney (32 N. Y., 377) it was held that the act of 1865, creating a metropolitan fire district, composed of the cities of Brooklyn and New York, and empowering the governor to appoint the commissioners thereof, who were to have the entire management in the city of New York of the fire department, did not violate the home-rule provisions of the constitution, for the reason that firemen were not officers within the meaning of the constitution, and the Draper case was approved.

In Board of Health *vs.* Heister (37 N. Y., 661), an act of the legislature which constituted the metropolitan sanitary district, composed of the territory embraced within the metropolitan police district composed of the four counties above mentioned, was assailed as unconstitutional, among other grounds, because it clothed the governor with power to appoint the health commissioners for he district in violation of the home-rule provisions in the con-
823 stitution, and this contention was overruled on the authority of the Draper case.

In The People *vs.* Shepard (36 N. Y., 285) an act creating a capital police district, composed of certain portions of Albany and Rensselaer counties and embracing within its bounds various towns and villages and providing for the appointment by the governor of the police commissioners, was held not to violate the constitution, on the authority of the Draper case.

In People *vs.* Acton (48 Barb., 524), affirmed in the court of appeals, the twelfth section of chapter 806 of the Laws of 1867, which

transferred to the board of metropolitan police all the powers and duties conferred by law upon the mayor and common council and all other boards and officers of the city of New York (except the metropolitan board of health) in respect to a large number of important matters, was held to contravene the home-rule provisions of the constitution, above quoted, approving however, the Draper case, and that while the legislature might have the power to take the discharge of such duties from the mayor and common council of New York, it could not do so without imposing them upon officers or boards locally elected or appointed. In the act thus condemned was a large and substantial invasion of municipal right of home rule and local self-government.

In People *vs.* Raymond (37 N. Y., 428), an act was under consideration which authorized the governor to appoint commissioners of taxes and assessments for the city of New York, and it was held that the officers thus to be appointed were city officers, and that the act was, therefore, unconstitutional. The Draper case was referred to and recognized as authority for the point therein decided.

In the Board of Excise *vs.* Barrie (34 N. Y., 657) it was held
824 that the act of 1866, creating a metropolitan board of excise, composed of persons appointed by the governor, violated no provision of the constitution.

In People *vs.* Bull (46 N. Y., 57), People *vs.* McKinney (52 N. Y., 374), People *vs.* Crooks (53 N. Y., 648), Rathbone *vs.* Wirth (150 N. Y., 459), People *vs.* Mosher (163 N. Y., 32), Devoy *vs.* The City of New York (36 N. Y., 449), and the Brenner case, recently decided in the court of appeals, several acts of the legislature were held unconstitutional, which in various ways, sometimes directly and sometimes indirectly, deprived municipalities of the choice of their local officers in violation of the home rule provisions of the constitution.

The act, chapter 638 of the Laws of 1873, to establish the Rensselaer police district, authorized the governor to appoint the police commissioners of the district constituted by annexing to the city of Troy three small patches of sparsely-settled territory, in all, less than a square mile; and in The People *vs.* Albertson (55 N. Y., 50) the court held, considering all its provisions, that the act was really intended for the city of Troy alone, and that all else was merely colorable; that the police commissioners were really city officers, and that the act, therefore, violated the home-rule provisions of the constitution and was unconstitutional. The Draper case was criticised by the judge writing the opinion, but not overruled, and it was left as authority for the precise point therein decided. As that case decided that the police commissioners were really city officers who should, under the constitution, be elected or appointed in the locality, it does not aid us much in the solution of the problem we now have in hand.

The act, chapter 564 of the Laws of 1865, conferred upon the commissioners of Central park, appointed by the governor, the exclusive care, management and control of portions of Sixth avenue and certain other streets in the city of New York for the purpose of

regulating, grading and otherwise improving the same. In
825 Astor *vs.* The Mayor (62 N. Y., 567) that act was assailed on the ground that it violated the home-rule provisions of the constitution by transferring to officers appointed by the governor functions theretofore always discharged by local officers elected or appointed in the locality; and it was held that the act was valid, evidently on the ground that there was no material invasion of home rule, the local officers being left with their general powers over all the other streets and avenues in the city. Miller, *J.*, writing the opinion of the court, said: The act "does not transfer the general powers of local officers elected by the people which existed at the time of the adoption of the constitution in violation of that instrument, or confer them upon other officers not elected, but merely confers authority in a particular case to perform acts which have an especial relation to, and connection with, the general purpose and design of the public improvement to carry out which the board of commissioners was organized. It would be carrying the doctrine of non-interference with local officers far beyond any reported case to hold that in no case whatever could any of the powers existing in a local officer at the time of the adoption of the constitution be taken away without violating the provisions cited. If the doctrine contended for is correct, it would be in conflict with the course of legislation in regard to the Central park from its first organization."

The case of Astor *vs.* The Mayor was followed in The People *ex rel.* Kilmer *vs.* McDonald (69 N. Y., 362), where it was held that an act, chapter 623, Laws of 1870, with subsequent acts amendatory thereof, constituting avenue commissioners named therein, for the purpose of widening an avenue in Saratoga Springs, was not unconstitutional as in conflict with section 2 of article 10 of the constitution. Rapallo, *J.*, writing the opinion of the court, said: "These commissioners do not take the place of the commissioners of highways, but are appointed for the special purpose of exercising a power, which
826 is undoubtedly possessed by the legislature, of widening a certain designated avenue, by proceedings different from those which could be taken by the commissioners of highways under existing general laws of the State. The commissioners of highways still continue in office and the charge of the avenue thus widened devolves upon them after the fulfillment of the office of the avenue commissioners."

In The People *ex rel.*, etc., *vs.* Cheritree (6 T. & C., 473) it was held that the acts, chapter 623 of the Laws of 1870; chapters 293 and 500 of the Laws of 1872, for laying out certain avenues and streets in Saratoga Springs, by commissioners appointed in the act of 1870, were not unconstitutional. In Hanlon *vs.* The Supervisors of Westchester (57 Barb., 383), it was held, on the authority of the Draper case, that the legislature had power to appoint commissioners to lay out an avenue in a town, although there were already three commissioners of highways in such town competent to act, and that such commissioners were not town officers.

I have now examined the principal authorities from the courts of

this State touching the question now under consideration, and also the statutes therein considered. From the foundation of our State government almost yearly there have been frequent invasions by the legislature and under statutes enacted by it of the rights of municipal home rule fully as serious as that made by the special franchise tax law, which, so far as I can find, have gone unchallenged in the courts. The legislature has either appointed or authorized the governor to appoint park commissioners, court-house commissioners, water commissioners, bridge commissioners and highway commissioners, in many cases thus interfering, to some extent, with the functions of local officers. It has from time to time diminished
the powers and duties of constitutional local officers, such as
827 sheriffs, justices of the peace and supervisors, thus depriving them of some of the functions they had prior to 1846.

The cases from other States to which my attention has been called shed no new or further light upon this question. Some of them arose under different constitutional provisions; nearly all of them bear upon phases of the questions of home rule and local self government embodied in fundamental law, about which there is no longer dispute in the courts of this State. They deal with statutes which took from the local officers a large share of their functions and transferred them to officers appointed by the legislature or governor, or authorized the appointment of purely local officers in the same way. They are a class of cases of which the Raymond case, the Bull case and other like cases, the Keeler case, the Albertson case and the Howland case, above referred to, are typical.

In consideration of all the authorities to which my attention has been called it is difficult, and, probably, impossible, to formulate a general rule by which we can always accurately determine when the home-rule provisions of the constitution have been invaded. While many cases may be put into a class dominated by decisions already made, there will always be border cases which must depend upon the facts they present and in the solution of which analogies, general principles and public policy must be resorted to. In the case of constitutional officers, so called, their functions cannot be entirely taken away. In the case of the local offices in cities, towns and villages, provided for in that portion of section 10 now under consideration, they can be abolished, but their substantial functions must remain in officers locally elected or appointed so as to preserve substantial home rule as it existed prior to 1846 and afterward. Those functions are not defined; they may be modified or regulated, but must be left, so far as needful to secure substantial home rule, to
people living in the municipal division named. They can-
828 not be taken away directly or indirectly or by any legislative subterfuge, but so long as they remain so that it can be said with truth that home rule is left to the localities no complaint on constitutional grounds can be made of legislative invasion. The question in every case arising under these home-rule provisions is, has the legislature taken away from officers elected or appointed in

the locality any function essential to home rule? If it has, its acts must be condemned; if it has not, the act must stand. As some of the cases above referred to show, the legislature may take away from local officers some of the functions they have always exercised without materially impairing municipal home rule. The legislature has taken from sheriffs the right and duty, which they always before possessed, to hold and execute convicted murderers, and conferred that right and duty upon State officers. They still remain sheriffs with their substantial function unimpaired. It can take away from justices of the peace jurisdiction and functions which they always exercised and they still remain justices for the substantial purposes of home rule. It can take from highway commissioners functions which they had always exercised over certain streets and bridges and confer such functions upon officers appointed outside of the locality under its authority. It can, to some extent, at least, take away from cities the management and control of their parks without depriving them of the substantial rights of home rule. It can take away from supervisors some of the functions which they had always exercised and from boards of supervisors the right to build the public buildings needed for the use of their county, and they are still left with the great body of home-rule functions. The transfer tax law is, undoubtedly, constitutional, although the localities have nothing whatever to do with the appraisal of the property to be taxed, or the levy, or the disposition of the taxes. It does not matter that this tax is really a tax upon the right of succession; it is, nevertheless, a tax and its amount is determined by valuing property. Before the death of the owner it was assessed by
829 local assessors to him; after his death and the ownership has passed to others, it is appraised to furnish the basis of taxation by officers not elected or appointed in a locality like local assessors. This is no material invasion of home rule. The assessors remain with substantially all the functions they ever exercised. There is a body of home-rule functions intended to be protected by the constitution, and so long as those functions are left to local officers, so that in every real sense home rule and local self government, as it existed prior to 1846, is preserved, no complaint can be made of legislative usurpation.

So that in any particular case it may be a matter of the degree and the extent of the invasion. It is no answer to these views to say that if the legislature can take away some of the functions of a local officer it may take them all away and thus create complete centralization of power at Albany. My reasoning and all the authorities show that this cannot be done. There can be a vast centralization of power at Albany within the pale of the constitution which may be very unwise and yet not unconstitutional, and the only remedy for this is in the hands of the people, who are the real sovereigns and who can, however temporarily swayed, be trusted to conserve the fundamental principles upon which our republican institutions rest and to promote the general welfare.

Now, does the special franchise act substantially invade the home-

rule rights of cities, towns and villages? Are they in any material manner deprived of local self government? The franchises taxed under the act were never before taxed (Smith *vs.* The Mayor, 68 N. Y., 552; People *ex rel.*, etc. *vs.* Commissioners of Taxes, 104 N. Y. 240; People *ex rel.*, etc., *vs.* Coleman, 126 N. Y., 443; *People ex rel.*, etc., *vs.* Barker, 146 N. Y., 304, and The People *ex rel.*, etc., *vs.* Barker, 152 N. Y., 47). It is true that they were property, but they were not so specified in the statutes relating to assessments and taxation that they could be assessed or taxed. They are intangible
830 property generally without the market or salable value other real estate has for the guidance of local assessors. They most always extend through several taxing districts and frequently through several municipalities. It is, at least, very difficult to assess their value. With the best of advantages and with the aid of expert skill and great experience and study it is difficult, if not impossible, to reach a satisfactory basis for their valuation. We know from our observation and experience how incompetent local assessors are to deal with such property generally not wholly within any assessment district. Under such circumstances, with this new species of property, generally having no precise circumscribed *situs* like other real property, the legislature in this act made this property taxable and committed its assessment to the State Board of Tax Commissioners, who can study the problems involved in the assessment and call to their assistance expert aid and resort to all needed sources of information as to values. Having all the franchises in the State to assess, they can obtain knowledge and skill in valuing such property which local assessors could never be expected to obtain. How can it be said that, as to this new species of taxable property thus circumstanced, the localities have been deprived of local self government by the law in question?

But it is said on behalf of the relators that the tangible property used in the streets in connection with these franchises was before assessable by the local assessors and that therefore the function of assessing such property could not be transferred to State officers. It is true that this tangible property was before taxable, but it intimately connected with the franchises. Indeed, it has very little value without the franchises and would have no existence but for the franchises, and the franchises would be of no value without tangible property to operate them, and so they are inseparable (People *vs.* O'Brien, 111 N. Y., 1). I do not believe that taking the assessment of these two kinds of property from the local assessors was a substantial violation of the right of local self government.
831 It is true that the property thus assessed is of great value in the cities of New York and Brooklyn and throughout the State, but they constitute but a small fraction of the property of the whole State. Notwithstanding the subtraction made by this act from the functions of the local assessors, they still remain assessors with the great body of their functions untouched and the self government of the localities is not seriously or materially impaired. The assessments as made by these State officers are to be placed by

the local assessors upon their assessment-rolls and then the taxes to be levied in the localities are to be apportioned to the same by local officers, and they are to be collected and disposed of like other taxes by local officers.

I do not wish to be misunderstood. I do not hold that every little violation of the constitution can be condoned. No real violation can be. Where a statute is challenged as violating the constitution the question must always be, is there a violation? And when there are definite constitutional provisions no departure whatever from them can be allowed. I mean such provisions as are found in sections 1, 2 and 6 of article 1, and in many other sections of the constitution.

I do not think that the fact that the writ of certiorari to review these assessments is required to be directed to the State Tax Commissioners alone and that no local officials are made parties to the proceedings has any bearing upon this constitutional question. All right of review, except before the commissioners themselves, could have been withheld. They are the proper parties to represent the State and all parties interested in upholding the assessments.

My conclusion is, therefore, that there is not, by the special franchise tax act, such a clear violation of the home-rule provisions of the State constitution as authorizes any court to pronounce it invalid on that ground.

832 *Federal Constitution.*

EARL, *Referee:*

I will, in this opinion, examine the contention of the relators that the special franchise tax act, chapter 712 of the Laws of 1899, violates the provision of the Federal Constitution forbidding the State to pass any "law impairing the obligation of contracts." The arguments and illustrations bearing upon this contention have been so numerous (as well as able and ingenious) that it must not be inferred because some of them have not been noticed in this opinion that they have been overlooked, as I have given all of them careful consideration.

These franchises were all granted by municipalities under statutory authority, or by the State, and the terms and conditions of each grant were specified in the law or ordinance granting the same. The grantees were required to pay, as a consideration or in full satisfaction, a gross sum, or annual sums, or a percentage on receipts, or license fees, and generally to conform to other conditions and stipulations contained in the grants more or less burdensome in the use of the franchises granted. These were all considerations for the grants (Mayor, etc., *vs.* Second Avenue Railroad Company, 32 N. Y., 261), and most of them were periodical or continuous during the existence of the franchise rights granted. While the grantees were under continual obligations of some sort, the grantors were under no obligation to do anything subsequently to the grants

except what every grantor is bound to do, to wit, not to nullify or impair the grant. So far as concerns the grantors, the grants were executed grants, while, on the part of the grantees, the obligations were generally executory, and thus these grants were contracts in a broader sense than grants completely executed on both sides when made (State of New York *vs.* The Mayor, etc., 3 Duer. 119; Brooklyn Central Railroad Company *vs.* Brooklyn City Railroad Company, 32 N. Y., 264; Mayor, etc., *vs.* Second Avenue Railroad
833 Company, *supra*). There were no stipulations or provisions in any of these grants about taxes or in any way exempting the grantees from taxation for and on account of the franchises granted.

The franchises were, in every sense, property in their nature usable, vendable, transferable, inheritable under the laws of the State, and thus constituted real wealth in the ownership of the grantees (People *vs.* O'Brien, 111 N. Y.; The People *ex rel.*, etc., *vs.* Deehan, 153 N. Y., 528; Ingersoll *vs.* Nassau Electric Railroad Company, 157 N. Y., 453). But they were not, prior to 1899, taxable, for the reason that they were not described or designated as property for the purposes of assessments and taxation in the tax laws of the State (Smith *vs.* The Mayor, 68 N. Y., 552; People *ex rel.* Panama Railroad Company *vs.* Commissioners of Taxes, 104 N. Y., 240; The People *ex rel.* Union Trust Company *vs.* Coleman, 126 N. Y., 443, People *ex rel.* Manhattan Railroad Company *vs.* Barker, 146 N. Y., 304; Same *vs.* Same, 152 N. Y., 417).

The act of 1899 is not a special law subjecting these franchises to taxation, but it is a general law amending the general tax law. It amends subdivision 3 of section 2 of that law so as to read as follows, the words in italics being new:

"The terms 'land,' 'real estate' and 'real property,' as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors, and other appurtenances upon, above and under ground; all surface, underground or elevated rail-
834 roads, *including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places;* all railroad structures, substructures and superstructures, tracks and iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, *including the value of all franchises, rights, authority or permission to construct, maintain or operate in, under, above, upon or*

through any streets, highways or public places, any mains, pipes, tanks, conduits or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. *A franchise, right, authority or permission specified in this subdivision shall, for the purpose of taxation, be known as a 'special franchise.' A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax."*

Then further amendments provide for the annual assessment of the special franchises by the State Board of Tax Commission-
835 ers, for a review before them, for a writ of certiorari to review in the courts their final determination and for placing upon the assessment-roll, prepared by the local assessors, the assessments so made by the State board. It also provides as follows:

"Deduction from special franchise tax for local purposes.—If, when the tax assessed on any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, copartnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, copartnership, association, or corporation, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway, or public place, shall be deducted from any tax based on the assessment made by the State Board of Tax Commissioners for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. The chamberlain or treasurer of a city, the treasurer of a village, the supervisor of a town, or other officer to whom any sum is paid for which a person, copartnership, association, or corporation is entitled to credit as provided in this section, shall not less than five nor more than twenty days before a tax on a special franchise is payable, make and deliver to the collector or receiver of taxes or other officer authorized to receive taxes for such city, town or village, his certificate showing the several amounts which have
836 been paid during the year ending on the day of the date of the certificate. On the receipt of such certificate the collector, receiver or other officer shall immediately credit on the tax-roll to the person, copartnership, association or corporation affected the

amount stated in such certificate, on any tax levied against such person, copartnership, association or corporation on an assessment of a special franchise for city, town or village purposes only, but no credit shall be given on account of such payment or certificate in any other year, nor for a greater sum than the amount of the special franchise tax for city, town or village purposes, for the current year; and he shall collect and receive the balance, if any, of such tax as required by law."

The act does not levy any tax upon these franchises, but taxes are to be levied upon them under the general laws of the State in the same manner as upon other property placed upon the assessment-rolls.

The taxing power of the State is practically unlimited. Everything that is really property of value to the owner may be taxed in common with all property, unless plainly exempted from taxation by some sort of valid contract. But a burden imposed upon property for public purposes under the guise of taxation, the purpose or necessary effect of which is arbitrarily to confiscate property or to impair contracts, cannot be upheld.

It is conceded that if the city or the State had exacted from these corporations for the use of their franchises additional conditions, or further payments than originally stipulated, such exactions would have been illegal as impairing the obligation of contracts. While the franchises belong to the State, they were public property held like other public property for the benefit of the whole people of the State, or for the benefit of the people living in the locality where they had their *situs*. But when they were granted they be-
837 came private property like other private property and became a part of the mass of property within the State in private ownership segregated from the public ownership and there is no reason of public policy founded upon their nature to condemn their taxation.

All the lands in this State are held in some way under grants from the State. In most cases the grantees pay what at the time was considered an adequate and full consideration for the lands granted. It would be a novel proposition to contend now that the lands thus granted—grants being in law contracts—could not be taxed like the mass of other property. Suppose the State leased land for a long term of years, or in perpetuity, for rent to be paid, or other considerations to be performed annually; will anyone seriously contend that such lands could not be taxed without the impairment of the obligation of contracts? And yet there would be there, as here, a continuous contract on the one part not to annul or interfere with the lease, and on the other part to pay the stipulated rent. Lands thus granted or leased no more enter into the general mass of property and private ownership than these franchises granted to individuals or corporations.

It is not true that a State cannot tax its own executory contracts or municipal executory contracts. Unless there is a stipulation in bonds issued by the State or a municipality ex-

empting them from taxation, they are taxable in the hands of the owners like notes or bonds of individuals or corporations (The People *ex rel.* Manhattan Fire Ins. Co. *vs.* The Commissioners, 76 N. Y., 64). And such taxation does not impair the obligation of such contracts. While such bonds stipulated for the payment of definite interest, they are property and taxable as such like other property. No part of the interest can be withheld under the guise of taxation. The contract must be performed as made, and after the interest has been paid to the person entitled, then the money so paid becomes taxable like other personal property
838 belonging to such person. The tax upon these franchises is not an additional compensation for them, exacted by the State, but it is a burden imposed upon them, as upon all other property, for the support of the government which protects them and makes their use valuable.

So I cannot perceive how it can be successfully contended that these franchises cannot be taxed by the municipalities and the State like other property without impairing the obligation of contracts, and no authority has been brought to my attention of holding such contention. The Mayor *vs.* Second Avenue Railroad Co. (32 N. Y., 261), and The Mayor *vs.* Third Avenue Railroad Co. (33 N. Y., 42), were cases wherein the city undertook to exact from the railway companies license fees beyond those stipulated in the original contracts and are no authority whatever for the contention that the State or the city cannot impose taxes upon such corporations for their franchises. The City of Walla Walla *vs.* Walla Walla Water Company (172 U. S., 1), The Little Falls Electric and Water Company *vs.* The City of Little Falls (102 Fed. Rep., 663), New Orleans Gas-light Company *vs.* Louisiana Light, etc., Company (115 U. S., 650), New Orleans Water Works Company *vs.* Rivers (115 U. S., 674), Louisville Gas Company *vs.* Citizens' Gas-light Company (115 U. S., 683), St. Tammany Water-works Company *vs.* New Orleans Water-works Company (120 U. S., 64), Chicago *vs.* Sheldon (9 Wall., 50), Coast Line Railway Company *vs.* Mayor of Savannah (30 Fed. Rep., 646), Western Paving etc., Company *vs.* Citizens' Street Railway Company (128 Ind., 525), North Western Telephone Company *vs.* City of Minneapolis (83 N. W. R., 572), City Railway Company *vs.* Citizens' Street Railway Company (166 U. S., 577), Los Angelos *vs.* Los Angelos Water Company (177 U. S., 558), and the recent case in the United States Supreme Court (City of Detroit *et al. vs.* Detroit Citizens' Street Railway Company), are all cases where an attempt was made by cities to change or destroy contracts under
839 which franchises had been granted, and, as I conceive, in no way reach the question of taxation of the franchises as property like other taxable property.

The case of Murray *vs.* Charleston (96 U. S., 62) is much relied on by the relators, but it is very far from an authority for their contention. There the City of Charleston had issued stock, generally called bonds, agreeing therein to pay the principal, together with six per cent. interest, payable quarterly. The city was authorized

by its charter "to make such assessments on the inhabitants of Charleston, or those who held taxable property within the same, for the safety, convenience, benefit and advantage of the city as shall appear to them expedient," and, claiming to act under that authority, the city passed ordinances to the effect that the holders of its stock should be assessed the value thereof and that the amount of the tax, by virtue of such assessment, in each case should be deducted by the city treasurer from the amount of interest payable upon the stock before payment and that the balance only after such deduction should be paid. It was held that the stocks could be taxed by the city like other personal property, but not in such wise as to impair the obligation of the contract; that the city was bound to pay the six per cent., and the whole of it, and could in no other way discharge its obligation; that it could not withhold a portion and discharge its obligation by paying over the balance; that it was bound to pay over the interest, and not until after such complete payment and the money had become the property of the payee and under his control could it be seized for a tax against it. The judge writing the opinion said: "The obligation undertaken, therefore, was both to pay the interest at the rate specified and to pay it to the plaintiff. Such was the contract and such was the whole contract. It contained no reservation or restriction of the duty described, but the city ordinances, if they can have any force, change both the form and the effect of the undertaking. They are the language of the promisor. In substance, they say to the creditor:
840 True, our assumption was to pay to you quarterly a sum of money equal to six per cent. per annum on the debt we owe you; such was our express engagement, but we now lessen our obligation. Instead of paying all the interest to you we retain a part of it ourselves and substitute the part retained for a part of what we expressly promised you. * * * Is, then, property which consists in the promise of a State or of a municipality of a State beyond the reach of taxation? We do not affirm that it is. A State may, undoubtedly, tax any of its creditors within its jurisdiction for the debt due to him and regulate the amount of the tax by the rate of interest the debt bears if the promise be left unchanged. A tax thus laid impairs no obligation assumed. It leaves the contract untouched, but until payment of the debt or interest has been made as stipulated we think no act of State sovereignty can work an exoneration from what has been promised to the creditor, namely, payment to him without a violation of the constitution. The true rule of every case of property founded on contract with the Government is this: It must first be reduced into possession and then it will become subject, in common with other similar property, to the right of the Government to raise contributions upon it. It may be said the Government may fulfill this principle by paying the interest with one hand and taking back the amount of the tax with the other, but to this the answer is that to comply truly with the rule the tax must be upon all the money of the community, not upon the particular portion of it which is paid to the public credit-

ors, and it ought, besides, to be so regulated as not to include a lien of the tax upon the fund. The creditor should be no otherwise acted upon than as every other possessor of money, and, consequently, the money he receives from the public can then only be a fit subject of taxation when it is entirely separated and thrown indistinguishable into the common mass."

(See comments upon this case in 76 N. Y., 64, above cited.) That case really upholds this taxation. These franchises have for-
841 ever gone from the city into the possession, control and private ownership of the grantees and are a part of the common mass of private property in the State, and, as such, are taxable without the violation of the obligation of any contract.

In the case of Hartman *vs.* Greenhow (102 U. S., 672) the court considered the funding act of the State of Virginia, which provided that the coupons attached to the bonds issued by the State in pursuance of that act should be receivable at and after maturity for all taxes, debts and demands due the State, and that this should be expressed on their face. After the issuance of its bonds in accordance with the act the legislature of Virginia passed another act declaring that thereafter it should not be "lawful for the officer charged with the collection of taxes or other demands of the State" then due or which should thereafter become due "to receive in payment thereof anything else than gold or silver coin, United States Treasury notes or notes of national banks of the United States." Here was a plain violation of the contract, and the act was held to be unconstitutional. Subsequently the Virginia legislature passed still another act providing that from the interest payable out of the treasury on those State bonds there should be retained a tax equal in amount to fifty cents per hundred dollars of their market value, and that it should be the duty of every officer of the State charged with the collection of taxes to deduct from the matured coupons which might be tendered to him in payment of taxes or other dues to the State such tax as was or might thereafter be imposed on the bonds. That act was in the same case held to be unconstitutional as impairing the obligation of contracts, following the case of Murray *vs.* Charleston, above cited.

The Federal Constitution provides that Federal judges shall "receive for their services a compensation which shall not be diminished during their continuance in office." During the civil war an income tax, a specific tax, was imposed upon the salaries of these
842 judges and the disbursing officer was required to deduct such tax from their salaries before payment, simply paying the balance. The judges protested against the deduction of the tax in the payment of their salaries on the ground that it was a diminution of their salaries, and the protest was allowed on the opinion of the Attorney-General, who said: "A specific tax by the United States upon the salary of an officer, to be deducted from the amount which otherwise would by law be payable as such salary, is, in my opinion, a diminution of the compensation to be paid to him" prohibited by the constitution, and he cited Dobbins *vs.* The Commis-

sioner of Erie County (16 Peters, 435) and Pacific Insurance Company *vs.* Soule (7 Wall., 434). This conclusion was reached on the same principles which guided the court in the case of Murray *vs.* Charleston. It was the duty of the United States to pay the whole salary, and then, having paid it, the money thus paid at once became taxable like other property. The salaries could not be thus diminished by withholding a part thereof on any pretext. But so soon as the constitutional obligation was discharged by payment and the salary had passed into the ownership of the judge it became taxable like other property. Here these franchises have passed to these corporations and they own them as their private property by an absolute, indefeasible title and they may be taxed like other property.

In New Orleans City and Lake Railroad Company *vs.* New Orleans (143 U. S., 192) it was held that a city ordinance imposing, pursuant to a statute of the State, a license tax upon the business of running cars for the transportation of passengers did not impair the obligation of a contract made before the passage of the statute by which the city sold to a railroad company for a large price the right-of-way and franchise for twenty-five years to run a railroad over certain streets and according to certain regulations, and the company agreed to pay to the city annually a real estate tax
843 and the city bound itself not to grant during the same period a right-of-way to any other railroad company over the same streets. The sole authority relied upon in that case by the plaintiff-in-error was Gordon *vs.* Appeal Tax Court (3 How. [U. S.], 133), which is also cited here by counsel for the relators. Mr. Justice Gray, writing the opinion in the New Orleans case, spoke of the Gordon case as follows: "In Gordon *vs.* Appeal Tax Court (3 How., 133), upon which plaintiff-in-error much relied, the only point decided was that an act of the legislature continuing the charter of a bank upon condition that the corporation should pay certain sums annually for public purposes, and declaring that upon its accepting and complying with the provisions of the act the faith of the State was pledged not to impose any further tax or burden upon the corporation during the continuance of the charter, exempted the stockholders from taxation on their stock, and so much of the opinion as might, taken by itself, seem to support this writ of error, has been explained or disapproved," citing the cases. To the same effect is the Delaware Railroad Tax (18 Wall., 206).

This franchise tax takes away nothing granted and it impairs no contract. The imposition of the tax is not an effort to exact more compensation for the franchises, but to compel the owners thereof to pay, in common with other owners of property, their share of the public burdens.

It is said that the right to tax is the right to destroy, and hence that if the legislature can tax these franchises it can practically destroy them, and hence nullify its grants. This legislative power is theoretically true and in theory reaches all legislative and municipal grants, but there is no danger from such a power in general laws imposing taxes upon all property. If it were attempted by special

legislation, the courts could extend their protecting arm and
844 stay confiscation under the guise of taxation, and if attempted by general laws, the people would find a remedy.

If the argument of the relators is to be carried to its logical results, then the State could never tax any franchises of any kind granted by it without impairing its contracts, and the millions which have been taken from corporations under franchise tax laws in all parts of this country during the past twenty years have been taken in violation of the Federal Constitution and have been illegally exacted.

It is said that these franchises cannot now be taxed because they were not taxable at the time they were granted. They were not by any law or contract exempted from taxation. They were property of immense value under the protection of the Government and there was no reason in their nature for exempting them from taxation. There was no contract expressed or implied, they should never be compelled to bear their share of public burdens like other property. The legislature, having unlimited power of taxation, may increase taxation and may bring within its scope new kinds of property values and thus disappoint the plans and expectations of many in all business relations. It may for the first time impose succession or transfer taxes, income taxes and many others that can be imagined and thus disturb business relations, investments of property and contracts between individuals in reliance upon existing laws, and yet such taxes cannot be condemned as violating the obligation of contracts. Persons who deal with the State and take grants from it do so with full knowledge of its power of taxation, and if they wish to be exempt from taxation as to any property or rights derived from the State, they must acquire such exemption by unmistakable stipulations in their contracts.

There are among these franchises some which were granted upon considerations which were stated in the grants to be in full
845 compensation for the franchises granted, thus showing that the considerations were compensation for the property granted. No just inference can be drawn from this that the considerations were in full or instead of taxation in common with other property. The grantees of such franchises are in no better or other condition as to taxes than the grantees of other lands of the State for full compensation.

In examining this claim for exemption from taxation I could not be unmindful of the rule frequently laid down by the courts in forcible language, that such a claim must be clearly established and cannot be sustained by doubtful or uncertain implications. The claimants must point to some contract, clearly giving it in plain and unambiguous language, showing the unmistakable intention of the parties. All doubts upon the question must be resolved in favor of the right of taxation (People *ex rel.* M. F. Ins. Company *vs.* The Commissioners, 76 N. Y., 64; People *ex rel.*, etc., *vs.* Davenport, 91 N. Y., 574; Covington & Lexington Turnpike Co. *vs.* Sandford, 106 U. S., 578; Wills *vs.* Savannah, 181 U. S., 539).

My conclusion, therefore, is that the assessment and taxation authorized under the act of 1899 upon the special franchises therein described do not impair the obligation of contracts.

Impracticability of the Act.

EARL, *Referee:*

In this opinion I will deal with the contention of the relators that the act is impracticable and therefore a nullity. The contention is stated in these words: "A special franchise has no ascertainable value beyond the value of the tangible property in connection with it. The right to use the streets cannot be valued. Its value cannot be separated from the value of other property
846 and rights. Hence the act which requires a State board to value each special franchise requires an impossibility and cannot be executed."

If the contention that the act is impossible of execution be well founded, then no authority is needed to show that it cannot have operation, and yet these authorities may be cited to that effect (Black on Statutes, 99; People *ex rel.* N. Y. C. & H. R. R. Co. *vs.* Morgan, 168 N. Y., 1; Hughes case, 1 Bland [Maryland], 46; Ward *vs.* Ward, 37 Texas, 389; Chaffee's Appeal, 56 Mich., 244; State *vs.* Partlow, 91 N. C., 550; Drake *vs.* Drake, 4 Dev., 110).

The argument made in favor of this contention was very able and forcible and yet it has not convinced me. The law commands these officers to value these franchises for the purpose of taxation and it lays down no rules or methods to guide them in the discharge of their duties. The law constitutes the special franchises real estate and they are left to ascertain the value of such real estate using all the rules and means of information which local assessors may call to their aid in valuing other real estate. They are not required to resort to what in legal proceedings would be called legal evidence. They may act upon hearsay, they may take the judgment of others, they may consult experts and resort to all the tests and information which they think will aid them in reaching the value with sufficient accuracy for the purpose of taxation and they certainly can resort to all the means and evidence for the guidance of their judgment which private persons might use to reach the values of similar property in which they propose to invest their money. They may consider the cost of reproduction, the amount of business, the earning capacity, the location of the franchise, and all its advantages, and all the probabilities and possibilities relating to it, present and future. No matter what methods the assessing officers use to reach values in making their assessments the taxpayer has no grievance unless his property has been overvalued and for such a
847 grievance he has his remedy by review before the assessors and a further review in the courts by writ of certiorari where, in an orderly legal proceeding in which he and his witnesses can be sworn, the whole matter may be again investigated. It is hard to

conceive that under such a system the value of any species of property having value cannot be reached with sufficient accuracy for the purpose of taxation. The law does not attempt the impossible. We know how bungling and imperfect the work of assessors frequently is. They are frequently ignorant and incompetent and know very little or nothing as to the value of much of the property which they are bound to assess and as to much property they can get very little accurate information for their guidance and can do little more than guess its value. But for all these imperfections alone their work cannot be condemned. If the result of their labors, even by mere chance, is a true valuation or an under valuation, the taxpayer has no grievance; and if there be an over valuation, he has the remedies above mentioned.

Here these officers, conceded to be skillful, competent and honest, had whatever information they could obtain from their inspection or general knowledge of the property and all the facts contained in the reports made to them upon their demand by these corporations, such as their chartered rights and liabilities, their gross earnings and expenses, the character, nature and value of all their tangible assets, the location and extent of their franchises and the length of their lines, and the nature of their use, the amount of their debts and their earning capacity as demonstrated by actual use. Besides all this they had, when they fixed their final valuations, such information as the corporations could give them at the time of the review before them. In the case of any of these corporations the tangible property is worth only the cost of reproduction, and what is left after deducting such cost must be mainly attributed to its
818 intangible street franchises. Suppose assessors are bound to assess manufacturing establishment operated by water power and they are commanded to put separate values upon the tangible property, consisting of buildings and machinery, and upon the water-power. After they have ascertained the value of the entire property, using all the means to which they may resort, and then have valued the tangible property at the cost of reproduction and have deducted that from the total value, may they not then take the balance as the value of the water-power?

But other complications not yet noticed are alleged by the relators which are claimed, with considerable force, to render these franchises peculiarly impossible of valuation, and I will now allude to them, so far as I deem it important, in the further illustration of my views.

There were two kinds of property to be valued, the intangible franchises granted in the streets and the tangible property in, under, over, on or through the streets used in connection with such franchises, and the two kinds together were denominated in the statute a "special franchise" and were required to be assessed and taxed together as a whole. It is not claimed that there is any serious difficulty in assessing the tangible property, but the claim is that it is impossible to assess the intangible franchises.

The principal claim of the relators, as I understand it, is that any

franchise granted to any of these corporations is so bound up with other matters contributing to the value of its use that its assessable value cannot be ascertained, and they mention the franchise to be a corporation. Such a franchise has very little cash value (Detroit Citizens' Street Railway Co. *vs.* Common Council, 85 N. W. Rep., 96). The supply of these under general laws is unlimited. Any sufficient number of persons can organize any one of these corporations and thus potentially obtain all the corporate rights belonging under
849 general laws to such a corporation—right to corporate existence, right to conduct the corporate business, right to consolidate and to contract with other corporations, and all other rights, privileges and franchises which belong to the corporation as such under the laws. All these franchises and privileges are of little cash value, as they may be obtained *ad libitum* at small cost by the payment of the organization tax and the expense of drafting and filing the articles of incorporation. Hence they can play a very unimportant part in valuing these street franchises. They can have value only when the corporations have obtained rights in the streets for the exercise of their corporate powers, and in valuing all the property of such corporations such value is so unimportant that the law would not take much account of it. Of course, the State can arbitrarily tax the franchise to be a corporation by special methods, but when an inquiry is set on foot as to the real value of such a franchise merely as such, it must be found to have but little more cash value beyond the cost of incorporation than the air we breathe.

It is said that the value of these franchises depends very much upon skill in their management, and as such skill cannot be valued, and cannot be eliminated in the valuation of the franchises, there is great difficulty in estimating their value, as they would have little value but for skill in their management. But it is possible to obtain skill by the payment of salaries which enter into the expense of management. Such property must not be valued at what it is worth under bad management, but it may be valued at what it is worth under good management. These properties must be taken for assessment for what they are, with all their capabilities and possibilities under such management as can ordinarily be obtained. A person buying one of these franchises, would consider, in fixing his price, not what it was capable of producing under poor management, but under good management. Its actual earning
850 power, its capabilities, fix its value. It is not the use to which one of these franchises is actually put that is the sole test of its value, but the uses to which it may be put may be considered. Must a farm or any other piece of real estate be estimated for assessment for what it is worth under poor management, or at what it is worth under at least fairly good management? The assessors in assessing such property must assume at least ordinary skill in its management. The producing capacity of a farm by the application of proper skill is the fair measure of its real value and generally measures its salable value.

It is further said that the value of the use of these properties de-

pend- absolutely upon capital furnished for their operation and upon structures outside of the street. But all these things can easily be procured *ad libitum* and their cost can be ascertained. But these street franchises are generally actual monopolies. Usually they cannot be duplicated. There cannot be two railways with double tracks in the same street. At any rate, all these franchises while they exist in any street without any competition therein are valuable properties. Assessors in valuing such property must take it as they find it with all its advantages, probabilities and possibilities and everything that adds value to it. They can eliminate all other property which is capable of unlimited reproduction from their consideration and thus find with sufficient accuracy for taxation its value. They can know how they have been used and how they are used and the uses to which they may be put, and hence they can value them with as much accuracy as they can much other property which assessors are bound to assess.

Then again it is said that good will enters into the value of the use of these properties and that that cannot be taxed in any case as part of the special franchise. There is no good will here pertaining to persons. If there is any good will it pertains to the property and hence adds to its value. A grist-mill or saw-mill situated
851 in a place where there must be numerous patrons is valuable on that account and the circumstance of its location with this so-called good will would always be taken into account in fixing its value for any purpose. It matters not that some of these corporations have contracts with their customers which are valuable and conduce to their profits. Such contracts are due to the fact that they have franchises in the streets without which they could not make the contracts. They are natural advantages of the franchises like the voluntary patronage of customers who are obliged to avail themselves of their use, and they add to their value and may be considered in their assessment. Such contracts tend to show what can be done with the franchises.

So these officers were bound to take into consideration in assessing these franchises their location and advantages for business uses and their natural patronage and earning capacity. Suppose assessors find in the hands of some taxpayer bonds of some corporation which are not listed on the stock market of New York and which have not been much dealt in so as to establish a market price for them. Their value may depend upon skill in management, upon capital, upon good will and all the contingencies which attend the franchises of the corporation. Can they in no way be valued for taxation? Their value *must* be ascertained by considering all the circumstances surrounding the corporation and affecting its ability to pay the interest and principal of the bonds when due.

It is quite true that large values have been added to some of these franchises by consolidations, lateral connections, terminal facilities and other matters growing out of present conditions. But whatever has enhanced their values, from whatever sources such values may come, it is their present value in the streets which must be assessed

for the purpose of taxation. It is not franchises in the
852 abstract, in the air, so to speak, that are to be assessed, but it is their present capacity to earn money for which all such franchises are owned and managed that constitutes their real value.

I do not think it is any more impracticable for these officers to value these franchises than it is for a jury to value the life of a person in an action to recover a death claim. How is it possible in most cases to measure with any degree of accuracy the value of a human life? The pecuniary value of the life to the next of kin is the measure. The life might turn out to be long or short, prosperous or disastrous, efficient or inefficient, and yet the jury, considering all the circumstances, must determine such value as well as they can without any guide laid down in the law. Their verdict in any case may be, and in most cases must necessarily be, a mere guess, and yet, unless they shoot wide of the mark, it will be upheld.

If these franchises cannot be valued for purposes of taxation, then they cannot be valued in any way for any purpose and on that account they could never be taken in condemnation proceedings. If any municipality of this State should judge it to be good policy to take any of these franchises, in many cases unwisely granted, for municipal use and operation, the doctrine of these relators, if sound, would forever stand in the way. The municipalities could not take them without paying their value ascertained in condemnation proceedings, and as that value could not be ascertained, it could not acquire them, and yet such franchises have been acquired by municipalities in this State, notably by the city of Syracuse, which acquired the franchises of a water company by condemnation proceedings.

My conclusion, therefore, is that there is no impossibility to assess these franchises with the reasonable accuracy expected or usual in assessing other kinds of property and in reaching other values, and I find no authority in conflict with this conclusion. In The People *ex rel.* U. V. Copper Co. *vs.* Feitner (51 App. Div., 217)
853 Judge Rumsey said: "By the express terms of the statute a party can only maintain a certiorari to review an assessment when it has been aggrieved by it. The theory upon which the assessment is made is of no importance. The only question to be examined in a case like this is whether the relator can be said to be aggrieved because the amount of the assessment is too large." In The People *ex rel.* Subway Co. *vs.* Barker (7 App. Div., 27), it was said that the action of the tax commissioners in assessing the capital of a corporation "must be based upon facts and evidence before them and must not be capricious, arbitrary or fanciful." This was said in a case where the corporation had placed facts and evidence before the commissioners which were admitted to be true and from which they could ascertain the value of its capital. The language quoted, standing alone and literally construed, does not state the law accurately. No matter by what methods the assessors reach their conclusion, if the assessment is not too high there is no grievance. Suppose "by capricious, arbitrary or fanciful methods" they assess

property at $10,000 which is worth $20,000; is the taxpayer aggrieved? In People *ex rel.*, etc., *vs.* Barker (48 N. Y., 70), Judge Hunt, speaking of the duty of assessors in assessing property, said: "They form their own judgment of the value of each piece of real estate and place it in the third column of their assessment-roll. This judgment they form from the best information in their power derived from their own knowledge and experience and from such communications as they may confide in." In People *ex rel.* Powers *vs.* Kallfleisch (25 App. Div., 432), it was held that in assessing for the purpose of taxation a very valuable building which cannot be said to have a market value its earning capacity can be considered. To show how uncertain the estimates of the value of even tangible property may be, the witnesses in that case, upon the trial before the referee, varied in their estimates as to the value of the land upon which the buildings stood from $233,000 to $650,000, and as
854 to the present cost of erecting the building from $400,000 to nearly $900,000. In The People *ex rel.*, etc., *vs.* Coleman (107 N. Y., 541), a case where the assessors were required to assess the capital stock of a corporation, it was held: "The law does not prescribe how the actual value of the capital stock of a corporation is to be ascertained. That is left to the judgment of the assessors, and in appraising the actual value they have a right to resort to all the tests and measures of value which men ordinarily adopt for business purposes in estimating and measuring the values of property. They may take into account the business of the corporation, its property, the value of its actual assets, the amount and nature of its present and contingent liabilities, the amount of its dividends and the market value of its shares of stock in the hands of individuals." The People *ex rel.* U. T. Co. *vs.* Coleman (126 N. Y., 433) is authority for holding that where there is no definite measure for valuing a franchise and the precise value is unknown, the value of the share stock and the general condition of the company may be considered, and in such a case the assessors have a right to resort to all the tests and measures of value which men ordinarily adopt for business purposes in estimating and measuring values of property. They may take into account the business, its property, the amount of its dividends and the market value of its shares of stock in the hands of individuals. In The People *ex rel.* The Edison Electric Illuminating Co. *vs.* Barker (139 N. Y., 55), a case involving the assessment of capital stock, Judge Peckham, speaking of a case where sufficient facts were disclosed from which the value of the capital stock could be accurately ascertained, said:

"Under such circumstances and for this purpose of assessment the market price of the shares of the stock into which the capital is divided is not material, nor the amount of the dividends which may have been paid by the company. These are not the subject of taxation under the law relating to the assessment of corporations, and such facts are immaterial when the exact data are given from
855 which the value of the capital can be accurately ascertained. In the absence of these exact data the facts just stated, as

well as others, may be looked at for the purpose of obtaining from them, as well as the nature of the facts will permit, what is the value of the capital and surplus, if any there be." Yet the earning of dividends depends largely upon skill in management and upon good will. In People *ex rel.* The Equitable Gas Co. *vs.* Barker (144 N. Y., 94), dividends and earning capacity were considered in valuing corporate property for taxation. In People *ex rel.* M. R. Co. *vs.* Barker (146 N. Y., 304), it was held that in making an assessment upon the capital stock of a corporation under the act, chapter 456 of the Laws of 1857, the earnings of the corporation may be considered by the assessors, and that when it appeared that its earnings enabled it to pay its running expenses, necessary repairs and interest on its indebtedness and to declare a dividend of six per cent. and still have a surplus, it was proper to assume that its capital stock remains unimpaired and that there are surplus assets sufficient to pay its outstanding indebtedness. There, again, were involved the incidents of skill in management and good will. In State Railroad Tax Cases (92 U. S., 575), the assessments there in question were required to be on the capital stock of corporations according to the fair cash value of such capital stock, including the franchise over and above the assessed value of the tangible property of the corporation, and there it was held: "That the capital stock, franchises and all the real estate and personal property of corporations are justly liable to taxation, and a rule which ascertains the value of all this by ascertaining the cash value of the funded debt, and of the shares of the capital stock as the basis of assessment, is probably as fair as any other. Deducting from this the assessed value of all the tangible real and personal property, which is also taxed, leaves the real value of the capital stock and franchise subject to taxation as justly as any other mode, all modes being more or less im-
856 perfect." There also were present as factors bearing upon values skill in management and good will.

I repeat, these assessors were not bound to view these franchises as abstractions apart from any use to which they could be put, but they had the right to consider, and as faithful officers were bound to consider, the uses for which they were intended in the streets and to which they had been actually applied. Suppose what constitutes the special franchise of any one of these corporations should be put in the market for sale? Can it be doubted that it would sell for a substantial price, a sum which business men could determine with sufficient accuracy for business purposes? Hence I think it is clear that these special franchises could be assessed for the purposes of taxation. The assessment is undoubtedly attended with great difficulties, but it can be made with such an approximation to accuracy as will satisfy all the requirements of the law and of the constitution. These officers could place some value upon them, and whether there was any overvaluation will be considered later.

Objections Not Before Considered.

EARL, *Referee:*

In this opinion I will deal with general objections to these assessments not considered in prior opinions.

1. Most of these relators had, under the laws of this State, prior to these assessments, acquired by consolidations the street franchises of other corporations, and although they thus became the owners of such franchises they now claim that under the special franchise tax act such franchises should have been separately assessed and not as one franchise, in the ownership of the corporation thus acquiring them, and that therefore the assessments in all such cases are illegal.

A special franchise is defined in the statute (chapter 712,
857 Laws of 1899) to be a "franchise, right, authority or permission" to use "streets, highways or public places" for the purposes mentioned in the act, and it is deemed to include the value of the tangible property in any street, highway or public place used in connection with the franchise.

The State Board of Tax Commissioners is commanded annually to "fix and determine the valuation of each special franchise subject to assessment in each city, town, village or district," and to "file with the clerk of such city, town or village a written statement of the valuation of each special franchise in such city, town or village or tax district, as fixed and determined by such board," and "each city, town or village clerk" is commanded to deliver a copy of such statement to local assessors "in each tax district."

Then it is further provided that the owners of these taxable franchises shall make a report to the tax commissioners "containing a full description of every special franchise" possessed or enjoyed by them, "a copy of the special law, grant, ordinance or contract under which the same is held, or, if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed."

This act should be so construed, if possible, as to make it practicable and operative, and to give effect to the legislative intention. If each special franchise, when there are several belonging to any one of these relators, must be separately assessed, then the difficulties attending the execution of the act are vastly increased, if not inseparable.

I think by the language used it is the plain purpose of the act to secure the assessment of "each" and "every" franchise—all the franchises. If it had been the intention that every franchise as
granted should be separately assessed, a matter of so much
858 practical importance would have been made plain by the use of the appropriate word "separately." There is nothing in the nature of assessments or of property which requires that all

separate pieces of property shall be separately assessed. All the personal property of an owner, however multifarious, is grouped together and valued as a whole, and so there is no general provision in the tax laws of this State which requires separate parcels of land, owned for the same purpose, to be always separately assessed. A farmer may own (not a very unusual circumstance) a wood lot or a pasture lot, near his main farm, and used therewith, and it cannot be doubted that such lot may be legally assessed with the farm as part thereof.

A corporation owning a franchise becomes the owner of other franchises by consolidation, and thus enlarges the franchise which it previously owned—just as a farmer may buy other lands adjoining his farm and thus enlarge his farm—all the lands becoming assessable as one body of land. These franchises, after the consolidations, belonging to one corporation, were used and managed together as one piece of property. They were in no way kept distinct. There was nothing in the streets to distinguish one from another. There was no separation of their earnings in separate accounts, and such earnings all went into the same treasury as common funds. The tangible property in the streets of all these franchises so combined in one ownership, had previously to this act been assessed as one piece of property, and this fact, together with the manner of the use and management of the property, must have been known to the lawmakers when this law was enacted.

The fact that the separate franchises thus combined may have different conditions attached to them, and have upon them separate mortgages and other burdens, does not render their taxation as one property impracticable, and any inconvenience expected to flow from such taxation is more imaginary than real. Several
859 adjoining farms, with different conditions, mortgages and other burdens affecting them, may be combined and taxed as a whole, and so may adjoining city lots, and no inconvenience or embarrassment of any kind follow, as no inconvenience or embarrassment ever did follow, so far as I am informed, from the taxation as real estate of the tangible property of these corporations in the streets as a whole.

But for the purpose of making this act practicable, I think a still broader view may be taken. After these consolidations were effected, and ownership of several franchises became thereby vested in one corporation, such corporation had "right, authority and permission," under the laws, to use and operate as owner all these franchises in the streets together as a whole, and it did so use and operate them, and no power could prevent it. Such "right, authority and permission" came within the definition of a special franchise which was required to be assessed.

It may be conceded that under the general laws of the State, as it has always been understood and practiced, separate, detached pieces of land owned by the same person and separately used and occupied, must be separately assessed. This rule applies to land having a visible *situs* and boundary, but the rule is not, I think, applicable to

real estate such as these franchises, which have no circumscribed *situs* and are used and managed in common as parts of one system.

There is no special provision of law applicable to the city of New York which requires franchises owned, used and managed together by one corporation, to be separately assessed for purposes of taxation. The only provision I find in the city charter is in section 889, which makes it the duty of the deputy tax commissioners to assess all the taxable property in the several districts, and to furnish to the
860 board of taxes and assessments "a detailed statement of all such property, showing that said deputies have personally examined each and every house, building, lot, pier or other assessable property, giving the street, lot, ward, house and map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known."

This section is not applicable to assessments made by these State officers. If it were, it would not require them to assess separately these franchises owned, used and managed together as a whole, and having no circumscribed *situs*, no lot number, and laid down on no tax map, and under this section the tangible property in the streets, used with these franchises before the passage of this act and assessable as real estate, were never separately assessed.

In the case of May *vs.* Traphagen (139 N. Y., 478), to which my attention has been called, the Brooklyn city charter required the local assessors to make ward maps, designating thereon, for the purpose of assessment, city lots by their numbers, and the assessments were required to refer and conform to such maps. In making the assessment there in question, the assessors assessed two lots as one, instead of assessing the two separately by their map numbers, as required by the law, and the assessment was held illegal. That case has no bearing upon the question I am now considering. In People *ex rel.* Lazarus *vs.* Feitner (65 App. Div., 318), six lots situated in the city of New York, belonging to different persons and designated separately upon the tax map of the city by separate numbers, were covered entirely by a single building, occupied by one individual, and as it was impracticable to apportion the value of the building among the various lots upon which it stood, it was held that the six lots could be assessed in bulk. That case is some authority for the contention of the defendants that where several franchises
861 are owned by one corporation under one control, combined into one system and operated together and it is impracticable to assess them separately, they may be assessed in bulk.

2. It is said that these State officers did not adopt any rule or method in making these assessments, and that therefore they should be set aside. There is no law or authority which requires assessors, in making assessments, to adopt any certain or fixed rule or method. The only rule for their guidance is the actual value of property to be assessed, and they may avail themselves of all tests of such value within their reach, and of every fact, and all information which, in their judgment, has any bearing upon such value. If, in assessing these franchises, these officers included with them the value of any

other property, thus enhancing their value, their assessments would be illegal. This I do not understand they did. I cannot find that they assessed any values but the special franchises, but in assessing them they considered several incidental matters, such as earning capacity, business advantages, etc., all bearing upon their value. If the local assessors throughout the State are bound to adopt some certain rule or method in reaching assessable values, and if their assessments must fail unless, when questioned, they can state some certain rule or method by which they were guided, I believe a large share of their assessments would fail to withstand the assaults of the taxpayers. All that such assessors could say when questioned is substantially what these officers have said here, that they availed themselves of such information as they could obtain as to values, and then fixed them according to their best judgment. Assessments when thus made are not illegal. They may be too high, and for that the remedy is by review. It is only when undisputed facts are before the assessors, and by adopting some wrong rule or method they disregarded such facts and thus enhanced their assessments, or when, by adopting a wrong rule or method, they included
862 in their assessments some element of value not belonging there, that the courts have condemned assessments for the use of an improper rule or method (People *ex rel.* the Manhattan Railway Co. *vs.* Barker, 48 App. Div., 248; People *ex rel.* Union Trust Co. *vs.* Coleman, 126 N. Y., 195; People *ex rel.* Edison Electric Illuminating Co. *vs.* Barker, 139 N. Y., 55; People *ex rel.* Edison Gen'l Electrical Co. *vs.* Barker, 141 N. Y., 251; People *ex rel.* Manhattan Railway Co. *vs.* Barker, 146 N. Y., 301; People *ex rel.* Manhattan Railway Co. *vs.* Barker, 152 N. Y., 417; People *ex rel.*, etc., *vs.* Dederick, 161 N. Y., 195).

Here the same rule was adopted by these officers in all cases, to wit: To use all the tests of values and all the facts and information bearing upon values, and then to fix the fair values of the franchises, including no other property, using their best judgment, and no decision condemns such an assessment. The judgment thus exercised is the same kind of judgment which local assessors generally exercise; in many cases it must be little better than a conjecture or guess, like the verdict of a jury in an action upon a death claim and in other cases, or the judgment of a large proportion of men who deal in stocks and securities in Wall street and in other large business transactions, and the only remedy of the aggrieved taxpayer is by review. A precise rule or method, an infallible or accurate judgment in such matters is impossible.

3. It is said that these assessments are illegal, because no proper hearing was given to the relators at the time of review before these officers. The complaint is that they did not inform the relators upon what "basis, theory, rule or principle" they proceeded in making the assessments, and what was in any case the value separately of the tangible property and of the street franchises which were required to be assessed together. I know of no rule that requires assessors, on grievance day, to give an aggrieved taxpayer

any information except what appears in the assessment-roll.
863 The taxpayer knows of the assessment and its amount, and he is present before the assessors to show that his assessment is illegal, or too high, and he has the burden as to both of these, and to establish his claim he has no legal right to catechise the assessors or ask their aid. If he has any grievance he is supposed to know what it is, and to be able to place, by his own oath or the evidence of witnesses, the necessary facts before the assessors. A party seeking before any judge in any way to review or overhaul his decision has no legal right to question him as to the methods and rules used in reaching his decision, and yet he could have a hearing and would not be deprived of due process of law.

4. The objection that the relators did not have due process of law in the taxation of their property is without foundation. They had notice of the assessments and a hearing on grievance day, and opportunity to produce all their evidence before the commissioners, and they have a further hearing upon the whole case in these proceedings now pending before me, and all this, within the most stringent rule to be found in any authority, constitutes, for such a case, due process of law (Stewart *vs.* Palmer, 74 N. Y., 183). And they have also had the equal protection of the laws within the meaning of the 14th amendment of the Constitution.

5. The act we are now considering is simply an amendment of the general tax law. It imposes no tax and appropriates or applies no money to any object, and therefore does not violate section 24 of article 3 of the constitution, which requires that "every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied" (In matter of McPherson, 104 N. Y., 306; Jones *vs.* Chamberlain, 109 N. Y., 100). If this objection could avail I do not see why it would not condemn the whole chapter of laws of which the special franchise tax is simply an amendment.

864 My conclusion, therefore, is that there is nothing in these general objections so far considered showing the illegality or invalidity of these assessments.

6. These franchises were all assessed at what these officers deemed to be their full and true value, while other real estate in the municipalities in which these franchises are operated was assessed by the local assessors at less than its full and true value, and so these assessment- will have to be reduced at least so much as will equalize them with the other assessments in the same localities. In New York the assessment of other real estate was sixty-seven per cent. of its full and true value. In Kings, sixty-eight per cent.; in Queens, eighty per cent.; in Richmond, sixty-six per cent., and in Westchester, ninety per cent.

If I find that these officers have in any cases assessed franchises at more than full and true value, my conclusions as to such assessments will be found in my opinions and findings in such cases.

865 (1712, Law.)

Affidavit of No Opinion.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Brooklyn City Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Assessment of 1900. No. 32.

STATE OF NEW YORK, *County of New York,* } *ss:*

Charles A. Collin, being duly sworn, says that he is a member of the firm of Sheehan and Collin, attorneys for the relator in the above-entitled proceeding, and that said attorneys have had charge of said proceeding; that deponent is acquainted with the details of the trial of said proceeding; that no written opinion was handed down by the justice before whom the said proceeding was tried.

CHARLES A. COLLIN.

Sworn to before me this 29th day of July, 1902.

L. BEDELL GRANT,
Notary Public, Kings Co (*No.* 10).

Cert. filed in N. Y. Co.

866 *Notice of Appeal.*

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Brooklyn City Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Assessment of 1900. No. 32.

SIRS: Please take notice that Brooklyn City Railroad Company, the relator herein, hereby appeals to the appellate division of the supreme court, for the third department, from the final order in the above-entitled proceeding, dated the 15th day of July, 1902, and entered in the office of the clerk of the county of Albany on the 15th day of July, 1902, and from each and every part of said order.

SHEEHAN & COLLIN,
Attorneys for Relator, No. 32 Nassau Street, New York City.

To John Franey, Esq., county clerk. Hon. John C. Davies, attorney general, attorney for respondent.

867 & 868 *Waiver of Certification.*

It is hereby stipulated that the foregoing are true copies of the petition, order for writ, writ, return, order of reference, evidence, report of referee, opinions of referee, exceptions to referee's report, notice of trial, proposed findings before court, decision, exceptions to decision, final order, notice of appeal, and of all other papers used in the foregoing proceeding, and certification thereof, as requested by section 1315 of the Code of Civil Procedure, is hereby waived, pursuant to section 3301 of said code.

SHEEHAN & COLLIN,
Attorneys for Relator.
JOHN C. DAVIES,
Attorney-General, Attorney for Respondent.

869 *Memorandum of Decision.*

Appellate Division, Third Department.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* BROOKLYN City Railroad Company, Appellants,
against
STATE BOARD OF TAX COMMISSIONERS, Respondents.

Order appealed from affirmed on the facts and reversed on the law, and assessment vacated, upon opinions in *People ex rel. Metropolitan Street Railway Company v. State Board of Tax Commissioners*, decided this term.

Form of order, if not agreed upon, to be settled by Chase J.

870 *Order of Appellate Division.*

At the term of the appellate division of the supreme court of the State of New York, held in and for the third judicial department at the court house of the appellate division in the city of Albany, on the 6th day of January, 1903.

Present: Hon. Charles E. Parker, P. J., Hon. Walter Lloyd Smith, Hon. S. Alonzo Kellogg, Hon. Emory A. Chase, Hon. Alden Chester, J. J.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Brooklyn City Railroad Company, Relator-Appellant, *against* STATE BOARD OF TAX COMMISSIONERS, Respondents. } Proceeding of 1900.

The above named relator, The Brooklyn City Railroad Company, having appealed to the appellate division of the supreme court of the third judicial department, from the final order in the above entitled proceeding, entered in the office of the clerk of Albany county, on the 15th day of July, 1902, and from so much of said order as confirmed the assessment of the relator's special franchise at five million and ninety-seven thousand, four hundred eighty-three and twenty-eight one-hundredth- dollars ($5,097,483.28), and said appeal having been duly argued by counsel for the relator-appellant, and by counsel for The State Board of Tax Commissioners, respondents, and all things having been duly considered,

Now, upon motion of Sheehan & Collin, Esqs., attorneys for the relator, it is

Ordered, adjudged and determined, that the order appealed
871 from so far as it confirms the assessment upon the relator's special franchise at five million and ninety-seven thousand, four hundred eighty-three and twenty-eight one-hundredth- dollars ($5,097,483.28), be and the same is hereby affirmed on the facts, and be and the same is hereby reversed on the law, and it is

Further ordered, adjudged and determined that said assessment upon the relator's special franchise, as confirmed as aforesaid at $5,097,483.28, is illegal and void, and the same is hereby directed to be stricken from the assessment roll.

JOSEPH H. HOLLANDS, *Clerk.*

872 *Opinion of Parker, P. J.*

Appellate Division, Third Department.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* Metropolitan Street Railway Company, Appellant, *against* THE STATE BOARD OF TAX COMMISSIONERS, Respondent. } Argued November Term, 1902.

Before Parker, P. J.; Smith, Kellogg, Chase, and Chester, associate justices.

The relator herein seeks to review and vacate the assessment made against it by the State Board of Tax Commissioners under the provisions of the so-called special franchise tax act; and the proceedings are taken under the provisions of article II of the tax law, as

amended by chapter 712 of the Laws of 1899. A certiorari was issued, and the issues made by the return thereto were duly referred. Upon the coming in of the referee's report the special term approved and adopted the same, and made an order modifying the assessment in some particulars, and, as so modified, sustaining the same. From such order this appeal is taken.

Henry A. Robinson, (Wm. H. Page, Jr., of counsel,) for appellant.

John C. Davies, attorney-general, (J. Newton Fiero, of counsel,) for respondent.

PARKER, *P. J.*:

The first question presented by this appeal is whether the provisions of the law which authorize the assessment and tax
873 complained of are violative of section 2 of article 10 of our State constitution. Such act, being chapter 712 of the Laws of 1899, first amends section 3 of the tax law by adding to the subjects of taxation therein specified the right or franchise to construct, maintain or operate upon, over or under the streets or public places of any town or municipality in the State, the tangible property thereon which was already specified in the section as being real estate and therefore assessable. The value of such tangible property, plus the value of the right to maintain and operate the same, is thereafter to be assessed and taxed together, and is denominated in the act as a "special franchise." No criticism is made that this addition to the taxable property named in the section violated any provision of the constitution; but the act further provides that the assessment of such special franchise shall be made by the State Board of Tax Commissioners. That board is required to fix the valuations of all such special franchises wherever found in the State, and to report such assessment or valuation to the proper local assessor, and such local officer is required to place such special franchise upon his roll of the taxable property in his district, at the valuation so received, and the tax is thereupon levied and collected against the same in the same manner and for the same purposes as against the other property on such roll.

This provision it is claimed violates the above cited section of the constitution, for the reason that it deprives the local assessors of a portion of their duties as such assessors, and directs the performance of the same duties by officers who are not chosen by the electors or any authorities of such locality.

In the Raymond case (37 N. Y., 428), this section, which is familiarly known as the home-rule provision of the constitution,
874 received judicial construction in its application to the subject of assessment for the purposes of taxation.

In that case, the legislature by chapter 410, Laws of 1867, sought to transfer the duties of the commissioners of taxes and assessments for the city of New York, who were officers appointed by local authorities, to a board of five commissioners appointed by the governor, by and with the consent of the senate. At the time of the adoption of the constitution of 1846, such duties of assessment were, and for a

long time had been performed by district assessors. By various acts passed in 1850, 1857 and 1859, the legislature had regulated the performance of such duties and changed the officers who were to perform them. But in each instance the selection of such officers was left to local authorities. The act of 1867, however, sought to change the selection of such officers from the city to the State, and it was at once challenged as being violative of the home-rule provision of the constitution. The question came before the court in the case above cited, and it was there distinctly held as follows: That beyond controversy the office in question was *exclusively* a city office. That the duties imposed by the act upon the new board, although broader in their extent, were essentially the same as those exercised by the city assessors in 1846. That the plain intent of the section of the constitution in question "was to preserve to the localities the control of the official functions of which they were then possessed, and this control was carefully preserved (consistent with the power of the legislature to make needful changes) by restricting the power of appointment of other officers to perform the same functions, to the people, or some authority, of the locality." That, hence, the act of 1867 deprived the people of the city of a right *secured* to them by the constitution, and was therefore void.

This case has never been reversed or modified, so far as I can ascertain, and would, I think be conceded by the respondents
875 in this case, to be a controlling authority in a case where the conditions were in all respects similar.

But, in what respect does that case, differ, in principle, from the one before us? There the act sought to transfer from local assessors to those appointed by the State authorities, the duty of assessing all the property in the city of New York. The decision is that the legislature was *without authority* to do that thing; that the function of assessing such property was, by the constitution, *secured* to officers selected by the locality. The act before us does not transfer the duty of assessing *all* the property in the various tax districts to the State assessors, but only all of a certain specified kind. Now, if the legislature is without authority to transfer the duty of assessing all, I am at a loss to discover whence it gets the right to interfere with the assessment of any part of such property. The right to have all the property in its locality assessed by officers chosen by itself, was secured to each town and municipality in the State by the constitutional provision in question; and, in my judgment, the legislature has no more power to infringe upon that right by withdrawing from its operation one particular species of property, than it has to withdraw a dozen. It is clear that by the statute before us, the right to assess a distinct kind of property in every district, and in some localities a very considerable portion thereof, is transferred from local to State assessors; and this transfer would seem to be as unwarranted as was the transfer attempted by the statute of 1867, which the Raymond case condemned.

It would seem that such decision "absolutely dominates" the case before us, and should control our disposition of the same. And so

it does, even in the judgment of the learned jurist whose decision as referee was adopted by the court at special term, and
876 whose opinion is now before us, were it not that he sees a distinction in the fact that the amount of property transferred from local to State assessment is, in every instance, very small as compared with the whole amount of property taxed, and in some localities does not amount to anything. All of the principles decided in the Raymond case he seems to adopt, but he sustains the act before us upon the theory that it does not substantially interfere with the home-rule principle, which it is the purpose of this section of the constitution to protect. The argument is, that it does not take away from the local assessors enough of their functions to operate as a substantial invasion of the right of home rule in any locality, and that therefore it is not a violation of the provisions of that section. As illustrating and sustaining this claim, he cites many cases in which acts of the legislature have been sustained that, to some extent, transferred from local to State officers certain duties which the local officers might, within the line of their duties, have performed. But in no one of them do I find that the act was sustained upon the ground upon which the referee would sustain this act.

In the Draper case (15 N. Y., 532), which is one of the earliest cases to adjudicate upon this section, the validity of a law was in question, which created a new metropolitan police district from the city of New York and three adjacent counties, and which provided for the appointment by State officers of the commissioners therein and abolished the existing police departments of the several municipalities within such district. That case sustained the act, on the ground that the State had authority to create new civil divisions for police purposes and to administer through its own officers the duties and regulations prescribed for the same. It distinctly held that had the act applied to the city of New York
877 alone, it could *not* have been sustained; but it denied that the constitution assumed that the subject of police was localized in the several cities and counties of the State. It held that, "as a political society the State has an interest in the repression of disorder and the maintenance of peace and security in every locality within its limits; and if from exceptional causes the public good requires that legislation, either permanent or temporary, be directed toward any particular locality, whether consisting of one county or of several counties, it is within the discretion of the legislature to apply such legislation as in its judgment the exigency of the case may require; and it is the sole judge of the existence of such causes." Hence it treated the authority of the State upon the subject of police as paramount over that of the localities; and substantially held that, for such reason, no exclusively local function had been interfered with. As to such functions, there was in fact no right of home rule to be preserved to the localities. And this is the principle which pervades and controls all the cases relied upon by the court below. In the Capital Police case (36 N. Y., 285) the act was held

good upon the same principle; while in the Albertson case (55 N. Y., 50) the act was condemned because it was held to apply to the city of Troy only. So in the case Rathbone *v.* Worth (150 N. Y., 459), the act concededly dealt with the subject of police for the city of Albany merely, and a very slight interference with its power of local appointment was condemned.

Upon the same principle, statutes concerning excise (34 N. Y., 657) and the preservation of the public health (37 N. Y., 661) were sustained. So those authorizing the construction of public parks, avenues, and even a court house, by commissioners named by the State, have also been sustained, even though such construction was
878 within the scope of the functions of local officers. Astor case (62 N. Y., 567); McDonald case (69 N. Y., 362); Cheritree case (6 T. & C., 473); Harlon case (57 Barb., 383). But the foundation of each decision has been, that the State had a paramount right to direct the work to be done, and hence could do it through its own instrumentalities. This is especially made clear by the reasoning of the opinion in the Oneida Courthouse case (170 N. Y., at page 108).

My analysis of these cases is made only for the purpose of ascertaining how far they sustain the principle upon which the court below has decided this case. Whatever criticism has been, or may be, made of any of them is quite unimportant to this case, so long as it is apparent that in neither is the decision placed upon the ground that the infringement complained of was not sufficient to substantially imperil the principle of home rule. In many of them the functions of the local officer were entirely transferred, and in each of them the controlling principle has been that the act of the legislature did not invade any right or function that was *exclusively* local in its character. In each instance it was held that the State had the paramount right to control the subject affected by the act, and hence that there was no invasion of local functions. As is said in the very excellent and scholarly brief submitted by the appellant's counsel on this question, it has been the *nature* of the power sought to be conferred upon the State officers that has controlled the decisions of the court.

Whenever the courts were of the opinion that the act did not interfere with any functions that were *exclusively* local, then the act was sustained, even though it *wholly* abolished the local office and transferred its functions to a State or department officer.
879 But whenever the functions affected by the act were exclusively local, whenever they *did not* come within the category of those over which it has always been recognized that the State, for the benefit of the State at large, has the paramount control, then any transfer whatever of such local functions has *not* been permitted. And therein lies the clear distinction between the Raymond case and those above cited. It is practically conceded by the referee that the subject of assessment of local property for local taxation is not a subject over which the State has paramount authority. As stated by him, "the assessment of property for the purposes of taxation has always

in this State been a function of local officers elected or appointed in the locality where they discharged their duties, and this system of assessment is entrenched in the constitution to secure to the people the home rule to which they had always been accustomed, and of which the people of our race have always been tenacious." Therefore, as against the position taken by the court below no argument is needed to establish that proposition.

A broader and bolder position, however, was taken upon the argument of this appeal. It was there said that no authority can be found for the claim that the assessment of property for local taxation is a function exclusively appertaining to local officers, and that the State has the same power to take from a local officer his duties and transfer them to a State officer as it had to take from the police commissioners of the city of New York their duties and transfer them to officers of a department of the State. In short, that its power over the subject of assessment is as paramount as is its power over all the several subjects referred to in the cases above cited, and that while the constitution prohibits the State from filling a local office which at the time of its adoption was filled
880 by election or appointment by local authorities, yet it does not prohibit it from abolishing such local office and transferring the duties of that office to an officer of the State at large; that it may take to *itself* the performance of any, or all, the functions of the local office, but it may not name the local officer to perform them; and so far as the question now before us is concerned, this is upon the theory that the State possesses the absolute power to tax, and hence it may take to itself the assessing of property, which is but an incident to the power of taxation. Evidently this theory utterly annihilates the constitutional protection to the principle of home rule for local municipalities, and leaves very little importance or effect to the section in question. It is at variance with many decisions of the courts construing this section and is approved by none. In the recent decision in this court of the Brenner case (67 App. Div., 381) it was said, "It must be regarded as well settled that the purpose of the constitutional provision in question is to secure to localities the fundamental right of self-government; that it protects all official duties existing at the time of its adoption vested in local officers, and inhibits the *transference* of such duties to officers not elected by the electors of the locality or appointed by local authorities; that it is not the officer but the office, the existing duties and functions, to which the protection is extended and which cannot be *transferred to an officer elected or appointed other than in the prescribed manner*." And this case was affirmed in the court of appeals. (170 N. Y., 185.)

Moreover, the Raymond case above cited is a direct authority against such view. As shown above, it declares that the plain purpose of the section was to preserve to localities the *control* of the official functions of which they were possessed at the time it was passed, and that "any other construction would render the
881 section in question, when applied to the cities of the State, substantially nugatory." Undoubtedly at that time assesso

of the localities were the *only* ones whose duty it was to assess property for local taxation. If the power to make such assessments may be now transferred to a State officer the *control* of the localities over that subject is as much taken away as if it were transferred to a local officer named by the State; and thus the purpose of that section is evaded. Clearly the *Raymond* case proceeds upon the theory that the duty of assessing local property for the purpose of local taxation was exclusively a function of the local assessors; and hence is authority for the claim that such duties may not be transferred by the legislature to *any* officer whatever who is not chosen by the localities themselves.

We are left, then, with the single question whether the views of the court below can be sustained upon principle only.

Its argument is, that the amount of property, the assessment of which is transferred from local to State assessors by this act, is so inconsiderable a portion of the whole that, as a matter of fact, neither of the localities is "in any '*material*' manner deprived of local self-government." That therefore their home-rule rights are not "substantially" invaded, and hence it does not at all infringe against the constitutional prohibition.

But the question is not whether such transfer affects their home-rule rights or their local self-government "materially" or "substantially," or, as I understand the argument, to an extent sufficient to do them any harm; but whether it does, or does not, amount to a direct and actual invasion of such rights. Beyond controversy, this act takes away from the local assessors the function of assessing a certain kind of property, and transfers it to the State Board
882 of Tax Commissioners, and to this extent makes such board perform the functions of a local officer; and, if we sustain this act, we must sustain their authority to do that very thing. But this is the very thing that the constitution says they may not do. Officers appointed by State authority may not be authorized to perform the functions of an office exclusively local. Clearly, the invasion which we would thus sustain, if repeated, would ultimately transfer the whole function of assessment from local to State officers; and so it would seem that the first invasion is as much a violation of the constitutional prohibition, as would be the one that transferred the last remnant of property remaining to the local assessor.

I cannot agree that the principle of home rule is not *endangered* because the *courts* may tell the legislature that it has *intruded* upon it far enough. Such is not the constitutional scheme for its protection. That instrument declares what the legislature may not do. They may not transfer the functions of a local office to State officers. If an act of the legislature attempts to do that, presumptively it is a dangerous invasion of the home rule principle—certainly it is a prohibited one. It is a question of authority on the part of the legislature. Concededly, it would not be authorized to so transfer, by other acts, many other specified kinds of property. Concededly, the time would come when, to save to localities their home-rule rights, the courts must hold an act to be unconstitutional, that in

itself attempts to do no more than this act does. In my judgment, both acts would be equally unauthorized.

It is suggested that so much of the "special franchise" as consists of the mere right to operate the tangible property in streets and public places has never heretofore been the subject of taxation, and that as to such new property the act in question, by depriving the local officers of the right to assess it, takes no right from them that they ever had before, and hence the principle of home rule is not invaded.

883 But it has been the duty of local assessors, ever since the office existed, to assess all property in their district that was liable to taxation, and they were the sole and only officers upon whom such duty was imposed. The legislature from time to time, as new species of property have come into existence, has imposed the burden of taxation upon them; yet it did not need an act of the legislature to enable the assessors to assess such new property. That duty devolved upon them as soon as the property was declared taxable, by virtue of the long existing and well-recognized function of their office, and it is this very duty of assessing *all* property in a locality upon which the legislature shall impose the obligation of paying a local tax, that the localities insist should be exercised by officers chosen by themselves. The functions of the office are neither enlarged by an addition of property to the tax list, nor are they diminished by a removal of property from that list. Undoubtedly the legislature has the power to do either, but the functions of the assessors' office remain the same. The right and the duty of the assessors to assess whatever property in their district the legislature shall declare taxable for local purposes is the long-existing and assured function of that office which is sought to be preserved. Therefore, when the legislature deemed it wise to add to the taxable list the so-called "special franchise," the duty of assessing it devolved at once upon the local assessors. Its creation at once brought it within the scope of their official duties. By virtue of the functions of such office it became the duty of the assessors to assess it. It is true that the assessors have never heretofore had the opportunity of assessing such property. It has never been made taxable and so brought within the scope of their duties, but their right and duty to assess, now that it has been made taxable, has always existed, and by appointing another officer to perform that duty

884 the act in question directly invades the functions of such office and attacks the principle of home rule.

Moreover, a considerable portion of the "special franchise" consists of tangible property that has long been assessed by the local officers. In the city of New York alone it amounts to something over seventy-six million dollars. All such property the law in question withdraws from the assessment by local assessors. It is argued that such property is a mere adjunct to the "franchise or right to use it," and that as the duty of assessing such right may be taken away, the duty of assessing its adjuncts must go with it. As said above, this is a question of power in the legislature, and I am unable

to understand how that body gets the power to withdraw the tangible property from local assessment by merely requiring it to be assessed with the intangible right to use it. It cannot do indirectly what it may not do directly. It has no more power to add to it intangible property, and so withdraw it from local assessment than it has the power to withdraw it directly from such assessment.

I am forced to the conclusion that so much of the act in question as provides for the assessment of a special franchise by the State Board of Tax Commissioners is unconstitutional and void.

I am not unmindful of the importance of this question. The great interest which the taxpayers of the State take in this effort to subject to the burden of taxation a very large amount of property, which undoubtedly is of immense value to its owners, and the disappointment which will naturally accrue through its failure to them and to those legislators who evidently adopted this plan as the one best calculated to protect alike the owner and the public, is fully appreciated by me. But this court does not enter as a
885 pioneer upon the consideration of this question. Every principle involved in it has been settled by the court of appeals, and we may do no more than recognize and enforce such principles in their application to this case. As stated above, in my judgment the decision in the *Raymond* case absolutely dominates this case.

Opinion of Kellogg, J.

KELLOGG, *J.*:

The question of the constitutionality of the so-called "special franchise" amendment of the general tax law is approached with no little hesitancy, owing to its importance; also to the fact that it has been discussed and determined by an able jurist, the learned referee appointed herein, and the further fact that the question is avowedly on its way to the court of appeals, where alone the question can be finally answered. Counsel on both sides have very ably and with evident conviction argued this question before us and insist upon the deliberate judgment of this court unbiased by what has gone before or what may come after, and we are therefore called upon to express our independent convictions and briefly state the grounds upon which they are based.

The learned referee has held that assessing property for the purpose of taxation under the general tax laws of the State is a local function and can be exercised only by local assessors elected by the electors of the locality or appointed by the local authorities. He says:

"The assessment of property for the purpose of taxation has always in this State been a function of local officers elected or appointed in the locality where they discharged their duties,
886 and this system of assessment is entrenched in the constitution to secure to the people the home rule to which they had always been accustomed and of which the people of our race have always been tenacious."

This must mean that the legislature has not the power to take from the local assessors this function and settle it upon an individual or body appointed by the legislature. It is not a function which the legislature has power to change from a local to a State function. This conclusion of the learned referee is supported by the court of appeals in People *v.* Raymond (37 N. Y., 428) and by every case in that court in which the question of assessment of property for purposes of general taxation has directly or indirectly arisen. The organization tax and franchise tax levied by the comptroller upon corporations are held not to be taxes, but charges by the State upon the right to do business in a corporate capacity, a privilege the State may give or take away. So with the inheritance tax; it is held not to be a tax upon property, but a charge upon the succession, also a right the State may give or take away. (Matter of Estate of Swift, 137 N. Y., 77.) It has never been claimed that valuations made by the comptroller or by his appointees or by any appointee of the State in such cases, for the purpose of fixing the sum to be charged for the enjoyment of these State privileges, was a local function. The State has seen fit to base its claim against certain corporations upon a valuation of capital employed in the State. It might have demanded a share of its earnings instead, and it might, without valuation, have taken a share in kind of the property of a deceased person as the price of transmission of the remainder to the heir, devisee or legatee. I do not therefore see how much incidental valuations for special purposes have any bearing upon the question before us.

887 Speaking generally of the home rule which the constitution essays to protect, the courts in many instances have undertaken to define, distinguish and point out what is *not* a local function as contemplated by the constitution; but as to the matter of assessment of property for general taxation they have uniformly held that to be a local function. The class of cases in which the courts have held the function to be exercised not to be exclusively local are such as relate to the exercise of police powers, and as instances of these are People *v.* Draper (15 N. Y., 532), People *v.* Pinckney (32 N. Y., 377), Board of Health *v.* Heister (37 N. Y., 661), Board of Excise *v.* Barrie (34 N. Y., 657), Astor *v.* The Mayor (62 N. Y., 567), People *ex rel.* Kelmer *v.* McDonald (69 N. Y., 362), People *ex rel. v.* Cheritree (6 T. & C., 473), Hanlon *v.* The Supervisors of Westchester (57 Barb., 383), City of Syracuse *v.* Hubbard (64 App. Div., 587), The People *ex rel. v.* The Board of Supervisors of Oneida Co. (170 N. Y., 105).

In these cases the court in every instance professed to see that the principle of home rule contemplated by the constitution was not involved for the reason that the function sought to be exercised was not local in such a sense as to deprive the State from its unlimited exercise. In some cases it is true that the prevailing opinion of the court conveys the impression that local self-government as a principle, so far as recognized by the constitution, is a sort of nebula with limitations as uncertain, unstable and elusive as the tail of a comet

(Matter of Allison, Com. of Jurors, 172 N. Y., 421), but all, nevertheless, declare that the constitution does recognize the principle and protects it against legislative encroachment.

It will be of little worth to here state the process of court reasoning by which conclusions were in those cases arrived at. We are only concerned with the uniform finding of the court in each
888 case that the function sought to be exercised by the State was not a local function and the home rule principle embedded in the constitution was in no manner or degree invaded. None of these cases excuses the conclusion arrived at on the ground that the invasion of the field protected by the constitution was slight or not substantial. None of them claims that there is a difference between a small invasion and a great one in determining whether an act of the legislature is constitutional or otherwise. If the theory of "substantial invasion" is the proper theory in determining whether or not there has been an unlawful violation of the constitution, the courts might well have held in the Brenner case (Matter of Brenner, 170 N. Y., 185) that the act considered was constitutional because there was left to the home rule the power of appointment and election of so many other officers that the taking away of a single office was not a substantial infringement.

It seems to me that the question of the constitutionality of the act we are considering hinges wholly upon the question as to whether or not the assessment of property for general taxation is an exclusively local function. If it is conceded to be, or is determined to be an exclusively local function and, as said by the referee, is a "system of assessment entrenched in the constitution to secure to the people the home rule to which they have always been accustomed and of which the people of our race have always been tenacious," then it must be the duty of the courts, until the people shall change the organic law, to see that these secured rights are not unlawfully invaded. It matters not, it seems to me, how little or how great may be the invasion proposed. Every little violation of the constitution is as inexcusable as is a larger violation. Considerations of convenience or better service have no place in the discus-
889 sion or in the determination of this question. If we were authorized to hew away the constitution every time it binds and so make it run in accord with the legislative idea of public needs we might then take into account the good and the bad which might result from the change.

The learned referee has found that the tangible property heretofore assessed by local assessors throughout the State amounts to $76,585,225. The assessment of this is, by the legislative amendment to the general tax law, taken from the local assessors and the function transferred to a State board. No one can deny that this is a palpable violation of the constitution, at least in some degree. It may not be a very large invasion but it is a material invasion, for I assume that every invasion, if plainly an encroachment, however small it may be, is material to those who give heed to a constitutional inhibition. The excuse for transferring this power to

assess the tangible property on, under and over the public streets and places, is based upon the claim that this property is inseverable from the franchise, the intangible property. That it is not inseverable for the purpose of valuation is plain. That is manifest from the findings of the referee who has ascertained from the testimony of the State board of assessors the value of the tangible and intangible separately. It is also plain from the approved method of assessment adopted by the State board, viz., appr-ising first the whole property of the corporation and deducting therefrom the value of all the tangible property of every name and kind owned by the corporation, estimated on the cost of reproduction, and taking the result as the net valuation of the intangible, or franchise. It is not inseverable either for the purposes of enforcing payment of the tax. The franchise may be sold without the tangible
890 property on, under or over the streets. Its value without the tangible would be the value of both less the cost of reproduction of the tangible; so the State board of assessors have determined, and both are separately valuable. The tracks of a street railway are no more essential to a profitable use of the franchise than are the power houses which furnish the power and which are not assessed with the intangible property; both the tracks and the power houses as well as the rolling stock may be replaced. The case cited (People *v.* O'Brien, 111 N. Y., 47) to show that "the franchises would be of no value without tangible property to operate them and so they are inseparable" was based upon Gue *v.* Tide Water Canal Co. (24 How. U. S., 257). That was a case where the sale of a canal by piecemeal was sought to be enjoined in equity. A levy had been made on the locks of the canal, the toll house and land surrounding the outlet locks, all essential to the uses of the canal. The court held that to sell a canal lock would destroy all value in the canal itself and would be of no value to the purchaser, hence the sale was enjoined. It is obvious that a canal so far differs from a street railway as to make the case cited wholly inapplicable. The tracks of a railway may be removed, but the lock of the canal could not be. There could be no replacement of the property sought to be sold appertaining to the canal, hence a sale would destroy the franchise. This cannot be the case as to any of the property contemplated to be assessed by the amendment of the tax law under the name of special franchise.

The assessment by a State board of the franchises themselves—the intangible property of a corporation as defined by the amended act—presents perhaps another question. This property is not new property coming to the locality but has always existed there
891 though it has never been locally assessed. To assess this property judiciously or by the method adopted by the State board the local assessors in most cases would need to go beyond their precincts. The property can hardly be said to be localized. For instance a street surface railway, a telegraph, telephone or pipe line, which runs through several incorporated villages and on the highways of intervening towns, must possess a franchise from each

municipality. The value of these franchises separately considered might be very little but the value combined might be very great. The right to run cars on the highways of a town could only be valuable as connected with the right to run through the other municipalities. These franchises therefore are only links in a chain. The chain may have great value but the links have no value except for their being component parts of the chain itself. It is obvious that to give a proper value to any link the value of the entire chain must be first ascertained and then an approximate apportionment would not be difficult. But the value of the chain largely depends upon the earning capacity for the time being of the entire property of the corporation used to do the business which the franchises permit to be done, and the value of the chain of franchises, ascertained in the mode adopted by the board of assessors—and no better mode has been suggested—requires a valuation of the entire corporate assets and a separate valuation of all the tangible property in each municipality and elsewhere situated, and then by a process of elimination the value of all the franchises together may be determined. It is possible that this might be done by local assessors, but in doing it they would be exercising something more than the usual local function of their offices. The appr-isement by local assessors of property in another municipality would, if permissible, be a function never before exercised. They could not be protected in so doing by any principle of home rule. And if this is what would be required of them I do not see how their local functions
892 could be disturbed or diminished by the appointment of a State board to make this assessment. The property to be assessed is not in its nature localized in any one taxing precinct. It is not property over which the local assessor has ever exercised jurisdiction. In some cities and in some other municipalities it may be that the entire corporate property including its franchises are located within the municipal limits, but such cases make the exception rather than the rule.

I advise a reversal, and that the assessment be set aside, on the ground that the amendment to the general tax law creating a State board of assessors and giving them power to assess the tangible property on, under and over streets and public places is an invasion of the functions of local assessors and in this respect is a violation of the constitution.

Opinion of Smith, J., Dissenting.

SMITH, *J.*, dissenting:

The legislative act, the constitutional warrant for which is here challenged, was passed in May, 1899. By its provisions a new species of property was added to the property theretofore taxable by law. This new species of property was the franchise, right or permission granted by municipalities to use the public highways and public places within the State. This franchise, right or permission

was defined by the statute to include the tangible property of the person, copartnership, association or corporation, the owner of the franchise itself, which was used upon the public way. It was provided that this tangible property should be taxed as a part of the special franchise; that the special franchise as thus defined
893 should be assessed by the State Board of Tax Commissioners, and their assessment as certified should be entered by the assessors or other officers of the various localities in which said franchises existed in the proper column of the assessment roll. One of the grounds of the relator's challenge is that this act violates the home rule provision of the State constitution as found in section 2 of article 10 of the constitution of 1894. That provision of the constitution reads as follows: "* * * All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as the legislature may direct."

The contention of the relator is that this constitutional provision is violated by giving to the State Board of Tax Commissioners the assessment, first, of the franchise, and second, of the tangible property in the street; which, by the act, is made a part of the special franchise subject to assessment by the State officers.

That the legislature might properly give to the State board the assessment of the franchise seems to me of undoubted right. The constitution provides that "all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as the legislature may direct." This provision is a clear index of the constitutional purpose to protect the localities in the home rule which existed at the time of the adoption of the constitution,
894 and to that extent only. All offices thereafter created are to be filled as the legislature may direct. By this act, the legislature has in effect created a new office—a franchise tax assessor; and to the extent of the assessment of the franchise, with duties not existing at the time of the adoption of the constitution. These duties, too, are distinct from and independent of any then existing duties of local officers. An intangible franchise has never been the subject of assessment by local assessors. This is held by the referee below. See People *v.* Barker, 152 N. Y., 417; People *v.* Com'r of Taxes, 104 N. Y., 240. Most franchises are enjoyed in connection with franchises from adjoining municipalities which have a value in their union, the value of which separately, however, is uncertain and practically undeterminable except by arbitrary appointment. To assess these franchises, access must be had to the books of the corporation and to other data which it would be difficult if not impracticable to give to the assessors of every tax district in which the franchise existed. The duty, therefore, of assessing these intangible

franchises, is, as I say, distinct from the duty of assessment of real and personal property. The fact that this franchise is, by the statute termed real estate, and that the local assessors were, at the time, empowered to assess all real and personal property within their tax district, does not affect the situation. Whether it be called real estate, personal property, or neither, is a mere matter of form. The intent of the legislature is plain to make taxable another species of property which had not theretofore been taxable, and to appoint State officers to assess the valuation of the same. But it is immaterial whether a new office has been created or new functions have been added to an old office. In either case existing home rule is not invaded by the assignment of such functions to legisla-
895 tive appointees. There is preserved to the locality every function possessed by it at the time of the adoption of the constitution. People *v.* Pinckney, 32 N. Y., 382; City of Syracuse *v.* Hubbard, 64 App. Div., 589. In my judgment, therefore, the right seems clear, both within the letter and within the spirit of the constitution to give to the State board of assessors the power to assess the intangible franchise. See People *v.* Draper, 15 N. Y., 532; People *v.* Wells, 172 N. Y., 421.

By this statute, however, the tangible property of the corporation within the street, used in connection with the intangible franchise, is made a part of the special franchise which the State officers are empowered to assess. The constitutionality of this provision presents a more serious question. This tangible property amounts to upwards of ninety millions of dollars within the State. It has heretofore since its creation been assessed by the local assessors. It was so assessed at the time of the adoption of the constitution. By this act, this local function, existing at the time of the adoption of the constitution, has been taken away from the local officers and given to the State board. By what rule of construction can this be justified?

Chapter 564 of the Laws of 1865, conferred upon commissioners of Central park, appointed by the central power, the exclusive care, management and control of portions of Sixth avenue and certain other streets in the city of New York for the purpose of regulating, grading, and otherwise improving the same. In Astor *v.* The Mayor, 62 N. Y., 567, that act was questioned as violating the home rule provision of the constitution, by transferring to officers appointed by the central power, functions theretofore always discharged by local officers elected or appointed in the locality. This act was held constitutional and the rule as stated in the headnote is as fol-
896 lows: "The constitutional provision does not prohibit the legislature from clothing officers appointed by it for the carrying out of a public improvement with power to perform acts which have an especial relation to and connection with such improvement, simply because the power to perform such acts was, at the time, of the adoption of the constitution, vested in local officers elected by the people." In discussing that act, Justice Miller, writing for the court, says: "It would be carrying the doctrine of non-interference

with local officers far beyond any reported case to hold that in no case whatever could any of the powers existing in a local officer at the time of the adoption of the constitution be taken away without violating the provision cited." In People *v.* Draper, 15 N. Y., p. 543, Denio, J., in writing of this provision of the constitution says: "If we were to establish the principle that the legislature can never reduce the administrative authorities of counties, cities and towns; can never resume in favor of the central power any portion of the jurisdiction of those local divisions, or change the partition of it among them, as it existed when the constitution was adopted, we should, I think, make an impracticable government."

The intimate relation of the tangible property in the street to the intangible property to which it is an incident is seen at a glance. For many purposes they are legally inseparable. In People *v.* O'Brien, 111 N. Y., 471, the court in its opinion, says: "In the former class has been held that at common law real estate acquired for the use of a canal company could not be sold on execution against the corporation separate from its franchise so as to destroy or impair the value of such franchise. Gue *v.* Tide Water Canal Co., 24 How. U. S., 257. And by parity of reasoning, it must follow that the tracks of a railroad company and the franchise of maintaining and operating its road in a public street are equally inseparable in the absence of express legislative authority providing for the same." In Syracuse Water Co. *v.* City of Syracuse, 116 N. Y., 182, the opinion reads: "The corporate rights and the cor-
897 poreal means of their exercise therefore constitutes, as it were, a single body, consisting of property corporeal and incorporeal. Both the power and the means of exercising it are essentially united and upon such union is dependent the enjoyment as well as the practical value of the franchise." Citing People *v.* O'Brien and Gue *v.* Tide Water Canal Co. In the case of Gue *v.* Tide Water Canal Co., upon which both of these opinions rest, a creditor of a canal company had levied an execution upon a house and lot, some locks in the canal, and some adjoining building lots, all the property of the canal company and necessary for the conduct of its business. It was there held, that because a sale of the tangible property without the franchise would result in a sacrifice of the property, equity would enjoin the sale in behalf of creditors and stockholders of the corporation and leave the creditor to an equitable action for a sale of the whole property, including the franchise, upon which the proceeds could be equitably distributed. This case, and the authorities based thereon, are distinguished by Justice Kellogg in his opinion, in which he says: "It is obvious that a canal so far differs from a street railway as to make the case cited wholly inapplicable. The tracks of a railway may be removed but the lock of a canal could not be; there could be no replacement of the property sought to be sold appertaining to the canal, hence a sale would destroy the franchise. This cannot be the case as to any of the property contemplated by the amendment of the tax law under the name of special franchise." This distinction

of Justice Kellogg is clearly overborne by the authorities. The principal of the case of Gue *v.* Tide Water Canal Company has been applied by the courts with equal force to the tracks and equipment of a railroad which cannot be sold separately from the franchise itself. See Hammock *v.* Loan and Trust Co., 105 U. S., 77;
898 Buncombe County Commissioners *v.* Tommey, 115 U. S., 122; Kittell *v.* Augusta T. & G. R. Co., 65 Fed. Rep., 861. In that case the opinion in part reads: "It further appears that said sale covers all the construction plant, tools and construction material belonging to said corporation. In such circumstances, a creditor cannot dissever from the franchise property essential to its useful existence." In National Foundry and Pipe Works *v.* Oconto Water Co., 52 Fed. Rep., 43, where a specific lien was given to a material-man upon a plant and franchise of a water company, it was held that they "cannot be separated by judicial sale because of their public use." The judge, in writing the opinion, says: "The structure here is of the class of which canals, street railways, railroads, telegraph, telephone, electric light and gas plants are examples, *and can only be dealt with as an entirety.*"

But it is urged that the tangible and intangible are not inseparable for the purpose of assessment. Possibly they are not absolutely inseparable.

As shown by the evidence the value of the intangible franchise must be determined by taking the value of the whole property, tangible and intangible, and deducting therefrom the value of the tangible. Thus the determination of the value of the tangible property is a prerequisite to the valuation of the intangible. Their values and use depend upon each other. Those values thus interdependent are given to the State board to determine. They are therefore reasonably connected for the purpose of assessment and taxation. And this is all that is necessary to authorize the legislature to attach the tangible to the intangible property for this purpose.

In the Astor case, above cited, the several avenues, jurisdiction of which was taken from the local assessors and given to the State officers, were outside of Central park, and not within the
899 jurisdiction of the park commissioners. These avenues might have been left to the local officers to improve. There was no absolute necessity that they be transferred to the park commissioners who were appointed by the central power. Nevertheless, by reason of their intimate relation and connection with the park and with the scheme of park improvement, the legislature was held authorized to take from the local officers functions which had theretofore been local functions, and transfer them to these State officers. If, as part of the park improvement, the legislature had thought best to give to the park commissioners the permanent control of the streets surrounding the park, I apprehend that the right to do so would be recognized by the courts as one reasonably connected with and incidental to the scheme of park improvement which the legislature was authorized to adopt and execute.

Nor do I find any authorities which conflict with the conclusion reached. The learned presiding justice deems this case controlled by the case of People *v.* Raymond, in 37 N. Y., 428. That case simply holds that the legislature has no right to abolish the office of commissioner of taxes and assessment of the city and county of New York, and to transfer the duties of that office to one appointed by State authority. It does not hold that his every function is inviolate, and that no part of his duties may be transferred to State officers if such be reasonably necessary as incidental to some plan which the legislature lawfully seeks to accomplish. The office of commissioner of highways cannot be abolished and his duties transferred to an officer appointed by the State. That office, equally with the office of commissioner of taxes of the city of New York, is one within the protection of the constitution. Nevertheless, it has been frequently held that some of the functions of the office of com-
900 missioner of highways may be taken from it and exercised by the State; and in the Astor case, an act taking from him certain functions was justified because they were incidental to the State plan of park improvement in the city of New York.

In the referee's opinion are cited many instances where certain functions are taken from local officers while the offices themselves are concededly protected under the constitution from destruction by the legislature.

The learned referee, before whom this case was originally tried, has admonished us of certain rules of construction by which we must be guided in the determination of this question. He says in his opinion: "There is also a rule many times announced by the judges that the legislative will is not to be thwarted as in conflict with the constitution unless such conflict is clear and undoubted; and that whenever an act of the legislature can be so construed and applied as to avoid conflict with the constitution and give it the force of law, such construction should be adopted. The legislature has supreme legislative power except as such power is limited in the Federal or State constitutions; and we must be able to point to some unmistakable constitutional limitation before such power can be curtailed. A further rule must, however, be observed, that a thing within the intent of the constitution, if that intent can be gathered from the instrument itself considered in all its parts or from the history connected with it of which a court can take notice, is, for all purposes, to be regarded as within its words and terms, and that the plain purpose of the constitution will not be thwarted by a too close adherence to its letter."

Guided by these rules of construction, we must not lose sight of the fact that what is protected by the constitution is the local
901 office and not each separate function thereof. It may be that the legislature would not have power arbitrarily to take from a local officer some of his regular functions, however small. The argument is not without force that a slight arbitrary invasion might be followed by another until the substance of the office is gradually taken from the locality. Where, however, the functions

of a local officer are left substantially unimpaired, to take from him certain of his functions and give them to State officers entrusted with the execution of a lawful State purpose, where the transfer is of *functions reasonably incidental to the fulfillment of that purpose*, in no way offends as against the constitutional prohibition. To hold otherwise and to rule that no single function may ever be invaded would materially cripple the power of the State in the institution of public improvements, and would, in my judgment, be a limitation never intended by the framers of the constitution. The legislature has transferred to State authorities the capital execution of criminals. Those functions have been taken from local constitutional officers and given to State officers. To question the constitutional right to accomplish this purpose would be generally recognized as quibbling over the constitutional restriction. The constitution should receive such liberal construction as will protect the people in the rights intended to be reserved, and at the same time render possible the growth and prosperity of the State. The limitation which the majority of the court have here found is at the most an implied limitation, unwarranted, as I think, either by authority or by any reasonable conception of the intent of the framers of the constitution. I am impressed with the conviction that to hold this law invalid is to pervert the will of the people of the State, as written in their fundamental law.

902 *Opinion of Chester, J., Dissenting.*

CHESTER, *J.*, dissenting:

The special franchise tax law (so called) chapter 712, Laws 1899, amended the tax law (chapter 908, Laws 1896) so that the terms "land," "real estate" and "real property," as used in the tax law, should include not only all surface, underground or elevated railroads, but "the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places;" and also the "value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon or through any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes." The amendment further provided that, "a franchise right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a 'special franchise.' A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place, or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise." It was also provided in the amendatory act that, "the

State Board of Tax Commissioners shall annually fix and determine the valuation of each special franchise subject to assessment in each city, town, village or tax district." The amendment also required the board to return its valuation to the local authorities to be included in the local assesment rolls, and required the local authorities to enter the valuation of the special franchises, so fixed by the State board, in the proper place in the local assessment rolls.

963 The act did not interfere with the office of assessors or other local officers charged with the duty of making assessments. The only power taken from such local officers was the power to assess the tangible property in the streets which was defined by the law to be, and to be taxed as, a part of the special franchise.

The most important question in the case is whether the legislature had the power under the constitution of the State to take this function from the local assessors. That the legislature had the power to commit to the State Board of Tax Commissioners the function of assessing the intangible property constituting a part of the special franchises is not, I think, open to serious question. Such intangible property was made taxable for the first time in this State by the amendment and the legislature had the undoubted right to commit its valuation for the purposes of taxation to any agency it might choose without the impairment of any functions of local officers, because no local officer ever had any power or authority over property of that character for the purposes of taxation.

As to whether or not the legislature could commit to the State Board of Tax Commissioners the power to value the tangible property in the streets forming a part of these special franchises is a more serious matter. My examination of this question has led me to a different conclusion from that reached by some of my associates and I will, as briefly as I may, state the reasons for my conclusion.

The home rule provisions of the State constitution which is brought in question here is found in section 2 of article X, and is as follows:

"All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, 964 town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct."

The office of assessor is not mentioned in this section, nor are the functions of any local officer defined therein. While this section expressly secures to the localities the selection of their local officers it does not in express terms protect the functions of such officers

from legislative or State interference. But the appellant's counsel insist, and no doubt rightly, that we may read into the constitution by implication from the history of the State at or prior to the time of the adoption of the constitution that the assessment of property for the purpose of taxation is a local function. So far I may agree with them and find ample authority in the decisions of the courts for so doing. But when they insist that under the implied provisions of the constitution such assessment is *exclusively* a local function in the sense that the State cannot interfere with it or confer upon officers appointed by State authority the function of valuing tangible property in the streets constituting part of a special franchise, notwithstanding such property has heretofore been assessed by local assessors, I find myself unable to yield my assent.

While an act of the legislature must stand the test as to whether its provisions are counter to the clearly implied, as well as to the express, provisions of the constitution, yet I cannot conceive it to be the duty of the court to aid in reading into the fundamental
905 law matters of doubtful or uncertain implication in order thereby to effect the condemnation of an otherwise valid act.

In considering this question some elementary principles may first be alluded to. The legislative power is absolute and unlimited, except as restrained by the State or Federal Constitution. (Bank of Chenango *v.* Brown, 26 N. Y., 467; People *v.* Flagg, 46 N. Y., 401; Lawton *v.* Steele, 119 N. Y., 232; Railroad Co. *v.* County of Otoe, 16 Wall. U. S., 667.) The power to tax is inherent in government and is a legislative power limited only by constitutional provisions. (Town of Guilford *v.* Supervisors of Chenango Co., 13 N. Y., 143; Clark *v.* City of Rochester, 24 Barb., 446.) The security for the abuse of this power is to be found in the responsibility of the members of the legislature to their constituents and not in the courts. (People *v.* Mayor of Brooklyn, 4 N. Y., 426.) Cities, counties and towns are but the instrumentalities for the convenient administration of local government; upon them, subject to constitutional limitations, the legislature may confer the power to tax to the extent necessary to good government and the imposition of a tax by cities, counties or towns for their support is as much an exercise of the taxing power of the State as a tax imposed directly by the State. (25 Am. & Eng. Enc. of Law, 80, 1st ed.) The power to assess is but an incident of the power to tax. The function of assessing for the purpose of taxation is a governmental agency for the proper division of the burdens of taxing and is but one of the elements in rendering the power of taxation effective.

In The Town of Guilford *v.* Supervisors of Chenango, *supra*, it was said, "Our State government is an independent existence, representing the sovereignty of the people. The power of the legislature is
906 the power of that sovereignty, and is supreme in all respects, and unlimited in all matters pertaining to legitimate legislation, except in those instances where the people have, in their fundamental law, limited or restricted it. Taxation is indisputably a legislative power. The constitution of this State will be searched in

vain for any clause which contains any restriction or limitation on the taxing power of the legislature."

If the legislature possesses such power with respect to taxation I can see no reason why with respect to a function which is but a part of the governmental machinery in carrying into effect the laws relating to taxation the legislature may not lawfully provide, as has been done by the amendment in question, that the State Board of Tax Commissioners may value the tangible property in the streets as a portion of the special franchises made taxable by the amendment.

The State has a direct interest in local assessments, for upon these assessments State as well as local taxes are paid. It has an indirect interest in them so far as they are made the basis of local taxation, because of its regard for the efficiency of local government and for the well being of all the municipalities which go to make up the State.

At the time of the adoption of the earlier constitutions, when it is claimed that the principle of local assessments became a part of our governmental system, there was not a railroad track, a telegraph line, a gas main or an electrical subway in existence. The right to assess and tax these various kinds of property in the streets has from time to time, and mostly in comparatively recent years, been conferred upon the local authorities by the legislature. If the legislature can increase the powers and functions of the assessors, as it has done repeatedly, why may it not take from these powers and functions, at least to the extent of that which it has given. If this tangible property in the streets had always been taxable there would
907 be more force in the contention that the local assessors had a constitutional right to value it for taxation, but the right to assess it at all has been given since the adoption of the earlier constitutions and this right is all that has been withdrawn by the act in question.

The constitution has not stood in the way of the withdrawal by the State of various functions from many local officers other than assessors and conferring such functions upon officers appointed by central or State authority. This principle has been sanctioned by the court of appeals in many cases. It was done as to police officers in People *v.* Draper, 15 N. Y., 532, and People *v.* Shepard, 36 N. Y., 285; as to firemen in People *v.* Pinckney, 32 N. Y., 377; as to commissioners of excise in Board of Excise *v.* Barria, 34 N. Y., 657; as to health officers in Board of Health *v.* Heister, 37 N. Y., 661; as to officers having supervision of street improvements in Astor *v.* The Mayor, etc., of New York, 62 N. Y., 567; as to commissioners of highways in People *ex rel.* Kilmer *v.* McDonald, 69 N. Y., 362, and as to boards of supervisors in the erection of public buildings in People *ex rel.* Commissioners, etc., *v.* Supervisors of Oneida Co., 170 N. Y., 105.

But it is said that the decisions in these cases and in others of analogous character, were justified in the exercise of the police power of the State, and not otherwise. The court, however, failed to

put its decision in most of these cases on that ground, nor did it give that question any prominence in any of them. Other sufficient reasons were found for the conclusions reached.

While it is entirely correct to say that the State has a great interest in maintaining good order through an efficient police force, in the protection of property and lives by well conducted fire departments, in promoting the public health, in the regulation
908 of the liquor traffic, in the maintenance of good roads and in other public improvements, yet none of these matters are of greater concern to the State than the power to exist, which depends upon the right in the legislature to levy taxes and, as incidental thereto, to have some power concerning assessments for that purpose.

The cases which are cited to support a contrary doctrine are cases where the legislature attempted to abolish local *offices* in the face of the express terms of the constitution, and confer the functions of such officers upon officers of State selection. The case of The People v. Raymond, 37 N. Y., 428, is one of these cases.

The appellant relies largely upon that case for its contention that the assessment of property for the purpose of taxation is exclusively a local function. That was an action to determine the title of the defendant to the office of commissioner of taxes and assessments of the city and county of New York and the only question in the case was as to whether or not an act of the legislature under which the defendant was appointed to that office by the governor and senate violated the home rule provisions of the constitution and it was held that it did, and that the legislature could not create a new office and vest the appointment in a central or State authority when the duties of the office were those of a former county or city officer made elective by the constitution. While it was said in that case that "there is no question but that the office in question is exclusively a city office," it was not there decided, nor could it have been, for the question was not up, that the function of assessing property for the purpose of taxation was exclusively a local function. The case is therefore not an authority for that proposition, nor do I know of any case that is. I think the question is an open one and must be decided in this case as a new proposi-
909 tion. That the Raymond case is not conclusive on this question, it seems to me, is clearly indicated by the court of appeals in the later case of Astor v. The Mayor, *supra*, where it was held that a law that took from local officers and conferred upon the commissioners of Central park, who were officers appointed by the legislature, the exclusive care, management and control for the purpose of regulating, grading and improving certain streets in the city of New York, was not unconstitutional, and where it was stated in the opinion of the court that, "It would be carrying the doctrine of non-interference with local officers far beyond any reported case, to hold that in no case whatever could any of the powers existing in a local officer, at the time of the adoption of the constitution, be taken away without violating the provision cited."

The intangible property, constituting a part of these special fran-

chises, is made taxable by the amendment in question for the first time. It is of very large value. It is so closely related to and so inseparably connected with the tangible property in the streets, constituting a part of the special franchises, that it would be very difficult, if not impracticable to value the intangible separate and distinct from the tangible property. (People *v.* O'Brien, 111 N. Y., 1.) The State board has not so valued it in this case and this court has held in an unreported case that a provision in a writ of *certiorari* requiring that board to state the values upon the tangible and intangible property separately was not justified under the law.

Nor is it practicable for special franchises, in many instances, to be valued by local assessors without extending their functions and jurisdiction beyond their tax districts, for the reason that such franchises frequently cover property extending into several tax
910 districts and the property in one district would have little value when disconnected with the property in the other districts but would have great value when taken as a part of the whole. It is also a kind of property requiring expert knowledge on the part of those who are to value it and knowledge which few local assessors possess.

To hold that the legislature can not commit to a State authority the duty of valuing for the purpose of taxation tangible property in the streets to the extent permitted by the amendment in question and under the circumstances existing here, requires, in my opinion, an altogether too strict and illiberal a construction of the constitution.

I think the legislature had the right not only to subject the large amount of intangible property existing as a part of these special franchises to the taxing power of the State but also to provide, as it did, in view of the changed conditions arising from the advancement and progress of our people over those which formerly existed, for the assessment of this intangible and tangible property together, by State officers, and that in so doing it has still left to the localities as large a measure of home rule as they enjoyed in this respect, when the local function of assessing property for taxation became part of our system.

So far reference has been had to the validity of the amendment under the State constitution. With reference to its validity under the Federal Constitution and to all the other questions discussed by the learned referee in the various opinions written by him, I agree with his reasoning and also with his conclusion and that of the special term, that the amendment is a valid exercise of legislative power.

I think the order should be affirmed with costs.

911 *Notice of Appeal.*

Supreme Court, Appellate Division, Third Department.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Brooklyn City Railroad Company, Respondent,
against
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and Lester F. Stearns, Tax Commissioners, Composing the State Board of Tax Commissioners, Appellants.
} Proceeding of 1900.

SIRS: You will please take notice that the above-named appellants, George E. Priest, J. Edgar Leaycraft and Lester F. Stearns, together constituting the State board of tax commissioners of the State of New York, hereby appeal to the court of appeals of the State of New York from the final order of the appellate division of the supreme court, third department, entered in the office of the clerk of the county of Albany, on the 30th day of January, 1903, and from the whole of said order, except that part thereof which affirms the order of the special term herein upon the facts.

Dated February 2, 1903.

Yours, etc.,
JOHN CUNNEEN,
Attorney-General, Attorney for Appellants.
Capitol, Albany, N. Y.

To the clerk of the county of Albany and to Sheehan & Collin, attorneys for relator-respondent.

912 *Stipulation.*

Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE BROOKLYN City Railroad Company, Respondent,
against
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. STEARNS, Tax Commissioners, Composing the State Board of Tax Commissioners, Appellants.

It is hereby stipulated under section 3301 of the Code of Civil Procedure that the foregoing are true and correct copies of all of the papers and evidence upon which the court below acted in making the order on file in the office of the clerk of Albany county and of all the evidence and papers upon appeal herein, upon which this proceeding was heard in the appellate division of the supreme court,

the memorandum of decision by the appellate division, the order of the appellate division, the opinions of Parker, P. J., and Kellogg, Smith, and Chester, JJ., and the notice of appeal to the court of appeals and certification thereof as required by section 1353 of the Code of Civil Procedure, is hereby waived.

Dated February 9th, 1903.

JOHN CUNNEEN,
Attorney-General, Attorney for Appellants.
SHEEHAN & COLLIN,
Attorneys for Relator-Respondent.

913 THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* METROPOLITAN STREET RAILWAY COMPANY, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE TWENTY-THIRD STREET RAILWAY COMPANY, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE CENTRAL CROSSTOWN RAILROAD COMPANY, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CONSOLIDATED GAS COMPANY OF NEW YORK, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* BROOKLYN CITY RAILROAD COMPANY, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CONEY ISLAND AND BROOKLYN RAILROAD COMPANY, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* NEW AMSTERDAM GAS COMPANY, Respondent, *v.* State Board of Tax Commissioners, Appellant.

1. Constitutional law—Transfer of essential functions of local officers to State officers prohibited—Home rule provision const. art. 10, § 2.—The home rule provision of the constitution (art. 10, § 2) providing that "all city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such
914 authorities thereof, as the legislature shall designate for that purpose," protects all essential or exclusive functions theretofore belonging to local officers and prohibits their transfer, whether direct or indirect, to State officers.

2. Construction of home rule provision as affecting taxation.—This provision, however, when invoked in relation to taxation should be considered in connection with the supreme taxing power of the legislature and neither should be so construed as to embarrass or cripple the other. Home rule, as understood and practiced in the past, giving to localities the right to govern themselves, but not to hamper the government of the State, should be carefully protected from open attack or indirect invasion. Shadows, however, should give way to substance, and the right to create a new system of taxation and bring in property of a new character, hitherto untaxed, with some other property incidental thereto and worthless without it, cannot be denied upon principle and should not be withheld from the legislature.
3. Corporations—General franchises defined.—The general franchise of a corporation is its right to live and do business by the exercise of the corporate powers granted by the State. Such franchise, however, gives the corporation no right to do anything in the public highways without special authority from the State or some municipal officer or body acting under its authority.
4. Special franchises defined.—A special franchise is the right granted to a corporation to construct, maintain or operate in a public highway some structure intended for public use, which except for the grant would be a trespass.
5. Tax—Special franchise tax act—L. 1899, ch. 712—Substance of statute.—Chapter 712 of the Laws of 1899, amending the general tax law and authorizing for the first time in the history of the State the assessment or valuation for the purpose of general taxation of all special franchises by a State board of tax commissioners appointed by the governor, declares in substance that the right, authority or permission to construct, maintain or operate some structure, intended for public use, "in, under, above, on or through streets, highways, or public places," such as railroads, gas pipes, water mains, poles and wires for electric, telephone and telegraph lines, and the like, is a special franchise. For the purpose of taxation such a franchise is made real estate and is "deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise," and taxed as a part thereof. (§ 2, subd. 3.) This includes nothing but what is in the street, directly or indirectly, and excludes power houses, depots and all structures without the lines of the street. The taxes thus imposed are for general purposes, are collected in the same way, and used for the same objects as other taxes upon the general assessment roll.
6. Act not violative of home rule provision—It creates new system of taxation, requiring officers with new functions to enforce

915 it—Tangible property connected with special franchises is an inseparable part thereof, forming an entity which was never taxable by local assessors.—The fact that such statute confers upon State officers the right to assess such franchises and especially the right to assess the tangible property annexed thereto and included therein by the act, which was formerly assessed by local boards of assessors, does not violate the principle of home rule embodied in the constitution. 1. Because it creates a new system of taxation and brings within its range a new character of property, which required new methods of valuation and the exercise of functions which never belonged to local assessors and must necessarily have been committed to State officers with new functions whose sole duty related to the subject of taxation in all its phases throughout the entire State, and who, with wider experience and greater opportunities for observation than local assessors, would be able to grasp the new scheme of taxation as a whole and whose action would be free from all local prejudice or color and uniform in its result. 2. Because the tangible property formerly assessed by local assessors is an inseparable part of the special franchises mentioned in the statute, constituting with them a new entity, which in a going concern can neither be assessed nor sold to advantage except as one thing, single and entire, and the function of assessing such entity is not essentially local in character, never belonged to localities, never was and never could be exercised with the requisite justice and uniformity by their officers, and, therefore, was of necessity conferred upon State officers, expert tax officials, having a jurisdiction coextensive with the limits of the State. Property, therefore, created by the legislature and never intrusted by it to local assessors cannot with propriety be said to have been taken away from them.

7. Authorities on home rule question collated.—The authorities relating to the home rule provision of the constitution collated and discussed.

8. Decisions, not expressions of judges used *arguendo*, establish legal principles.—Legal principles are not established by expressions of learned judges, used *arguendo* in their opinions in a given case, but by what was decided therein, and what is written is not evidence of what was decided unless it relates directly to the question presented for decision.

9. Franchises taxable as other property—Act is not violative of Federal Constitution as impairing the obligation of contracts.—A franchise, whether general or special, is taxable the same as other property, and, therefore, the statute taxing special franchises, which changes no part of the grant, alters no stipulation, increases no payment, exacts nothing from their owners that is not exacted from the owners of property generally, does not impair the obligation of a contract and cannot be regarded as violating the Federal Constitution.

10. Additional objections overruled.—Contentions that the act is impracticable and incapable of execution; that the special
916 franchises should have been separately assessed; that the State Tax Commissioners adopted no rule in making the assessments; that the relators did not have a proper hearing at the time provided for review, and that due process of law was not observed in the taxation of their property, after due consideration, are overruled.

People *ex rel.* Met. St. Ry. Co. *v.* Tax Com'rs, 79 App. Div. 184, reversed.

People *ex rel.* T. T. St. Ry. Co. *v.* Tax Com'rs, reversed.

People *ex rel.* C. C. R. R. Co. *v.* Com'rs, reversed.

People *ex rel.* N. A. Gas. Co. *v.* Tax Com'rs, 79 App. Div. 643, reversed.

People *ex rel.* C. Gas Co. *v.* Tax Com'rs, 79 App. Div. 643, reversed.

People *ex rel.* C. I. & B. R. R. Co. *v.* Tax Com'rs, 79 App. Div. 643, reversed.

People *ex rel.* B. C. R. R. Co. *v.* Tax Com'rs, 79 App. Div. 643, reversed.

(Argued April 6, 1903; decided April 28, 1903.)

Appeal in each of the above-entitled proceedings from an order of the appellate division of the supreme court in the third judicial department, entered January 30, 1903, which reversed an order of special term reducing and confirming as reduced an assessment upon the special franchises of the respective relators.

The assessments in question were made in the year 1900, pursuant to the provisions of the tax law, as amended by chapter 712 of the Laws of 1899. Separate writs of certiorari, granted to review the respective assessments, resulted in an order in each proceeding appointing a referee to take and report to the supreme court such evidence upon the several issues raised by the petition, writ and return as might be adduced before him by the parties, with his findings of fact and conclusions of law thereon. After taking many pages of evidence the referee made separate and complete findings of fact appropriate to each proceeding, and as conclusions of law in each found "that chapter 712 of the Laws of 1899 is a valid and constitutional enactment, practicable and operative, and that it gave authority to the defendants to assess the relator's special franchises for the purpose of assessment and taxation; that the relator had a hearing and due process of law before the defendants upon the review of its assessment * * * and was not deprived of
917 any of its legal or constitutional rights; that it was lawful to assess as one franchise the franchise, right, authority or permission which the relator had in the streets of New York and which it operated as one system; that to equalize its assessment with the assessment of other real property in the city of New York, the relator is entitled to a deduction," the amount being named in each

proceeding, "and that the assessment as thus reduced must be taken as the value of the relator's special franchise for the purposes of assessment and taxation under the act."

The supreme court adopted the findings both of fact and law made by the referee and directed that final orders be entered in accordance therewith. From the order so entered in each proceeding the relator therein appealed to the appellate division, which affirmed as to the facts but reversed as to the law, upon the ground that the statute in question was in violation of the "home rule" provision of the constitution. Two of the justices dissented. The State Board of Tax Commissioners appealed to this court from the several orders entered accordingly.

John Cunneen, attorney-general (*William H. Wood* of counsel), for appellant. The entire statute is valid. There is no arbitrary line which separates the official functions which properly belong to local officers from those which properly belong to State officers. The power to make the distinction is vested in the legislature. (Const. of 1777, § 20; Const. of 1821, art. 4, § 15; Const. of 1846, art. 10, § 2; Matter of Henneberger, 155 N. Y. 421; People *ex rel. v.* Albertson, 55 N. Y. 50; Matter of N. Y. D. Ry. Co., 42 Hun, 621; 107 N. Y. 42; People *ex rel. v.* Lorillard, 135 N. Y. 280; Rathbone *v.* Wirth, 150 N. Y. 459; N. Y. F. Dept. *v.* A. S. Co., 106 N. Y. 577; People *v.* Cheritree, 6 T. & C. 473; Greaton *v.* Griffin, 4 Abb. Pr. [N. S.] 310; Hanlon *v.* Bd. of Suprs., 57 Barb. 383; City of Syracuse *v.* Hubbard, 64 App. Div. 587.) It is within the power of the legislature to create a new office to be filled by a State officer and to transfer the power of valuing property to it, even
918 though this power has, since before 1777, been exercised by local assessors. (Matter of Allison *v.* Welde, 172 N. Y. 421; People *v.* Raymond, 37 N. Y. 431.) The subject of assessment and taxation is the "right," "privilege" or "franchise" to occupy a street. The "tangible" property employed in the exercise of this right is merely incidental to the right. Prior to the enactment of chapter 712 of the Laws of 1899 the property thereby rendered assessable had never been assessed locally and, therefore, the local assessors are deprived of no function. (Matter of N. Y., W. S. & B. R. R. Co., 37 Hun, 317; Richmyer *v.* Morss, 3 Keyes, 349; Matter of McPherson, 104 N. Y. 306; Matter of Romaine, 127 N. Y., 80; People *v.* H. Ins. Co., 92 N. Y., 328; H. Ins. Co. *v.* New York, 134 U. S. 594.) The franchises granted by the municipal authorities to the relators herein to use public streets are property. (People *v.* O'Brien, 111 N. Y. 1; People *v.* Deehan, 153 N. Y. 528; Ingersoll *v.* N. E. R. R. Co., 157 N. Y. 453.) The grant of property by the State or by a municipal corporation, upon payment therefor of a consideration, payable either in gross or by annual payments, and expressed in the grant, does not carry with it any implied condition or agreement that the property so granted shall be forever thereafter exempted from taxation. Taxation of the property so granted is not an impairment or change of the contract by which the grant was made. (People *ex rel. v.* Board of Commissioners, 76 N. Y. 64;

People *v.* Commissioner of Taxes, 82 N. Y. 459; People *ex rel. v.* Davenport, 91 N. Y. 574; Delaware railroad tax, 18 Wall. 206; M. G. L. Co. *v.* Shelby County, 109 U. S. 398; N. O., C. & L. R. R. Co. *v.* New Orleans, 143 U. S. 192; Ford *v.* D. & P. L. Co., 164 U. S. 662.) A law which imposes a tax upon property for public use and in which provision is made for notice to the person taxed, a hearing before the assessing officers, and an opportunity for review by the courts does not take property without due process of law. (Kentucky R. R. tax cases, 115 U. S. 321; McMillen *v.* Anderson, 95 U. S. 37; Lent *v.* Tillson, 140 U. S. 316; Palmer *v.* McMahon, 133 U.
919 S. 660; Paulsen *v.* Portland, 149 U. S. 30; Stuart *v.* Palmer, 74 N. Y. 183.) It is possible to ascertain the value of a special franchise with substantial correctness and the act is not void from impracticability. (People *v.* Davenport, 91 N. Y. 574; People *v.* Feitner, 54 App. Div. 217; People *v.* Coleman, 107 N. Y. 541; People *ex rel. v.* Barker, 144 N. Y. 94; People *ex rel. v.* Barker, 146 N. Y. 304; C. S. Ry. Co. *v.* Common Council, 125 Mich. 673; A. E. Co. *v.* State Auditor, 166 U. S. 185.) The assessments are not illegal, because several special franchises belonging to the same corporation, and all in the same tax district, were assessed as a unit and not separately. (People *ex rel. v.* Feitner, 65 App. Div. 318; 169 N. Y. 604; C. S. R. R. Co. *v.* Common Council, 125 Mich. 683.)

David B. Hill for respondents. The function of assessment for the purposes of taxation is inherently a local function and adheres to the counties, cities, towns and villages of the State with substantially the like effect as though there was an express provision therefor in the constitution, and such function cannot be transferred to officials not elected or appointed by such localities. (People *v.* Raymond, 37 N. Y. 428; Matter of Brenner, 170 N. Y. 185; People *v.* Albertson, 55 N. Y. 50; Rathbone *v.* Wirth, 150 N. Y. 459; People *ex rel. v.* McKinney, 52 N. Y. 374; People *ex rel. v.* Crooks, 53 N. Y. 648; People *ex rel. v.* Foley, 148 N. Y. 677; People *ex rel. v.* Randall, 151 N. Y. 497; People *ex rel. v.* Palmer, 154 N. Y. 133.)

Charles F. Brown, David B. Hill, Frank H. Platt and *William H. Page, Jr.*, for Metropolitan Street Railway Company, respondent. The effect of the special franchise tax law is to transfer to the office of State tax commissioners the function of assessing a large class of property for local purposes, which, at the adoption of the constitution, was a function of the office of city, town or village assessors. This the legislature had no power to do. (People *v.* Ray-
920 mond, 37 N. Y. 428; People *ex rel. v.* McKinney, 52 N. Y. 374; People *v.* Albertson, 55 N. Y. 50; Matter of Brenner, 170 N. Y. 185; Matter of Allison *v.* Welde, 172 N. Y. 421; People *v.* Draper, 15 N. Y. 532.) The assessment of property has always been the function of a local officer. (1 Dowell's Hist. of Taxation, 70, 74; 1 Stubbs' Const. Hist. of England [3d ed.], chs. 12, 14, 15; Howard's Local Const. Hist. of U. S. ch. 4, subd. 6; People *v.* Harding, 53 Mich. 481; People *v.* Hurlburt, 24 Mich. 44; Slaughter House cases, 16 Wall. 36.) The assessment of property for the purposes of taxation is a function of local officers, who are required to

be selected as provided by section 2 of article 10 of the constitution. (People *v.* Raymond, 37 N. Y. 428; Warner *v.* People, 2 Den. 272; People *v.* Albertson, 55 N. Y. 50; People *v.* Priest, 169 N. Y. 432.) The special franchise tax law cannot be sustained upon the fact that a franchise to use streets, highways and public places was not at the adoption of the constitution subject to direct taxation, or upon the theory that the relation between the franchise and the tangible property in connection therewith is such that the legislature is justified in withdrawing the latter from the jurisdiction of local assessors and requiring both classes of property to be assessed together by State officials. (L. 1900, ch. 254, § 42; People *v.* Albertson, 55 N. Y. 50.) The special franchise tax law cannot be sustained upon the grounds that the amount of property withdrawn from the jurisdiction of local assessors is so inconsiderable that the home rule principle of the constitution is not violated. (McCulloch *v.* Maryland, 4 Wheat. 316; Met. Bd. of Excise *v.* Barrie, 34 N. Y. 657.) The contention that it is within the power of the legislature to take to itself and resume the appointment and control of offices for the purpose of performing administrative duties throughout the whole State, even though such administrative duties were at the adoption of the constitution performed by local officers in the cities, towns and villages of the State for local purposes, cannot be sustained. (Dillon on Mun. Corp. [4th ed.] § 12; 921 Rathbone *v.* Wirth, 150 N. Y. 459; People *v.* Hurlburt, 24 Mich. 44; People *v.* Acton, 48 Barb. 524; Devoy *v.* Mayor, etc., 36 N. Y. 449; People *v.* Pinckney, 32 N. Y. 377; People *ex rel. v.* Common Council, 28 Mich. 228; Att'y General *v.* Bd. of Councilmen, 58 Mich., 213; City of Evansville *v.* State, 118 Ind. 427; State *ex rel. v.* Deemy, 118 Ind. 382; People *v.* Shepherd, 36 N. Y. 285.) The Board of Tax Commissioners erred in assessing all the special franchises of the relator as a single franchise instead of "fixing and determining the value of each" as required by section 42 of the tax law. (May *v.* Traphagen, 139 N. Y. 478.) The contention that the relator is the owner of several special franchises and that each is a separate piece of property is sustained by consideration of the legal character of the property and by the provisions of law applicable thereto. (May *v.* Traphagen, 139 N. Y. 478; People *ex rel. v.* Dolan, 126 N. Y. 166; People *ex rel. v.* Clapp, 152 N. Y. 490; People *ex rel. v.* Barker, 48 App. Div. 248; Williams *v.* N. Y. C. R. R. Co., 16 N. Y. 97; Craig *v.* R. C. & B. R. R. Co., 39 N. Y. 404; People *v.* Kerr, 27 N. Y. 188; Milhau *v.* Sharp, 27 N. Y. 611; People *v.* Cassidy, 46 N. Y. 46; People *v.* O'Brien, 111 N. Y. 1.)

William H. Page, Jr., for Twenty-third Street Railroad Company *et al.*, respondents. The legislature of this State cannot appoint or authorize central authorities to appoint any local officer, nor can the legislature create State officers to perform an inherently local function of government. (Sheboygan *v.* Parker, 3 Wall. 93; Matter of Mayor, etc., 99 N. Y. 569; People *ex rel. v.* State Bd. of Canvassers, 129 N. Y. 360; Rathbone *v.* Wirth, 150 N. Y. 459; People *v.* Mosher, 163 N. Y. 32; People *v.* Bull, 46 N. Y. 57; People *v.* McKinney, 52

N. Y. 374; People *v.* Crooks, 53 N. Y. 648; People *v.* Foley, 148 N. Y. 677; People *v.* Acton, 48 Barb. 524; Matter of Brenner, 170 N. Y. 185.) The function of assessing property—of perfecting a valuation of property as a basis of taxation—is to be exercised
922 exclusively by local officers; and, therefore, the officers who exercise that function in New York city must be "city officers" within the meaning of the "home rule" provision of the State constitution. (People *v.* Raymond, 37 N. Y. 428.) The effect of the special franchise tax act is to deprive the local assessor of the function of assessing taxable property, and is, therefore, unconstitutional. (People *ex rel. v.* Priest, 169 N. Y. 432; People *v.* Hastings, 29 Cal. 449.) The history of the assessment of taxable property in New York State shows conclusively that the function of assessment has always been regarded as a purely local function, and it is impossible to suppose that the people intended to confer upon the legislature the power to interfere with this immemorial custom. (1 Colonial Laws, 14, 61, 131; 2 Colonial Laws, 259; 3 Colonial Laws, 577; 4 Colonial Laws, 419; 5 Colonial Laws, 858; Goodell *v.* Jackson, 20 Johns. 693; Matter of Allison *v.* Welde, 172 N. Y. 421; People *ex rel. v.* Potter, 47 N. Y. 375; Pope *v.* Phifer, 3 Heisk. 682.) This court has upheld the right of the legislature to interfere with local administration of certain State police powers. (People *ex rel. v.* Draper, 15 N. Y. 532; Metro. B'd of Excise *v.* Barrie, 34 N. Y. 657.) But the assessment of property as a basis of taxation has always been as a matter of fact, and has been held to be as a matter of law, exclusively a local function of government. (People *v.* Raymond, 37 N. Y. 428.) Special franchises must be valued by a local officer, because the special franchise tax act provides for the imposition of a property tax, and not a license fee. (Matter of Swift, 137 N. Y. 77.) The contention that the so-called "special franchise" constitutes a new species of property, with the characteristic distinguishing features that it is partly intangible and not localized does not warrant its assessment by a State official. (City of Buffalo, *v.* Le Couteulx, 15 N. Y. 451; M. S. Bank *v.* City of Rochester, 37 N. Y. 365; Cooley's Const. Lim. [6th ed.] 220.)

Frank H. Platt for Consolidated Gas Company of New York,
923 respondent. The special franchise tax law taxes only the rights of a company to use streets, and its tangible structures in the streets used in connection with those rights. The tax is laid on no other property or right. The valuation must be of the special franchise, separate from all other rights and property. (People *ex rel. v.* Dolan, 126 N. Y. 166.) The considerations which influenced the commissioners in making their assessment of the company's special franchises afforded no true test of the value of those special franchises, and resulted in no actual valuation thereof. The assessment was a mere arbitrary determination. (People *ex rel. v.* Ganley, 29 N. Y. S. R. 135; City of Syracuse *v.* Stacy, 45 App. Div. 249; People *ex rel. v.* Barker, 146 N. Y. 304; People *ex rel. v.* Coleman, 126 N. Y. 433; State R. R. Tax Cases, 92 U. S. 575; C., C., C. & St. L. R. R. Co. *v.* Backus, 154 U. S. 439; A. E. Co. *v.*

Ohio State Auditor, 165 U. S. 194; People *ex rel. v.* Barker, 139 N. Y. 55; 141 N. Y. 251; People *ex rel. v.* Barker, 165 N. Y. 305.) The valuation of property according to some proper principle of valuation is essential to the validity of an assessment, and as the valuation of the State board was a mere arbitrary determination, the assessment should be set aside. (Lee *v.* Parry, 4 Den. 125; Doughty *v.* Hope, 3 Den. 594; Powell *v.* Tuttle, 3 N. Y. 396; People *v.* Supervisors, 11 N. Y. 563; Middletown *v.* Berlin, 18 Conn. 189; Cooley on Taxation, 353, 354; Woodman *v.* Auditor-General, 52 Mich. 28; Greenough *v.* Fulton Coal Co., 74 Penn. St. 486; People *v.* Hastings, 29 Cal. 449; People *ex rel. v.* Coleman, 126 N. Y. 433; People *v.* Weaver, 100 U. S. 539.) The company is aggrieved by the assessment, and has shown itself entitled to relief. (People *ex rel. v.* Barker, 148 N. Y. 70; People *ex rel. v.* Coleman, 126 N. Y. 433; People *ex rel. v.* Barker, 146 N. Y. 304; 152 N. Y. 417; People *ex rel. v.* Dederick, 161 N. Y. 195; People *ex rel. v.* Barker, 139 N. Y. 55.) There is no method by which the value of a special franchise can be ascertained. (People *ex rel. v.* Dolan, 126 N. Y. 166; People *ex rel. v.* Clapp, 152 N. Y. 490; People *v.* Kerr, 27 N. Y. 188; Kellinger *v.* F. S. S. Ry. 924 Co., 50 N. Y. 206; Zollikoffer *v.* Havemeyer, 2 Hun, 300; Matter of Adams, 141 N. Y. 297; Matter of B., H. T. & W. R. Co., 22 Hun, 176; People *ex rel. v.* Com'rs, 104 N. Y. 240; State R. R. Tax Cases, 92 U. S. 575; C., etc., R. R. Co. *v.* Backus, 154 U. S. 439.) As there is no method of ascertaining the values of special franchises, the franchise tax act is impossible of execution. (People *ex rel. v.* Morgan, 168 N. Y. 1; Hughes' Case, 1 Bland, 46; Ward *v.* Ward, 37 Tex. 389; Chaffee's Appeal, 56 Mich. 244; Drake *v.* Drake, 4 Dev. 110.) The assessment of the special franchises of the company should be set aside, because the board undertook to assess all of its special franchises as one franchise instead of assessing each franchise separately. (E. E. Co. *v.* N. H. E. L. Co., 35 Fed. Rep. 233.)

Charles A. Collin, William F. Sheehan, John L. Wells, Thomas L. Hughes, Charles H. Werner and *Charles V. Nellany* for The Brooklyn City Railroad Company, respondent. There is a clear distinction between a corporate charter, constituting the contract of incorporation, which is legislative in its character and subject to legislative alteration, amendment or repeal, and legislation constituting a business contract with a private corporation which is essentially contractual in character, and is not subject to legislative alteration, amendment or repeal, without the consent of the private corporation, party to the contract. (Langdon *v.* Mayor, etc., 93 N. Y. 129; People *v.* O'Brien, 111 N. Y. 1.) Such franchise contracts as form part of the special franchises of these respondent corporations (whether such franchise contracts are constituted directly by State legislation accepted by the corporations, or by municipal ordinance, authorized by the legislature and in like manner accepted by the corporations) are business contracts, protected by the Federal Constitution from impairment by legislative alteration, amend-

ment or repeal, without consent of the corporation. (City of Walla Walla *v.* W. W. W. W. Co., 172 U. S. 1.) The taxing power cannot be invoked by the State to raise itself above the position of a private person, as regards the sacred
925 observance of its business contracts. (Murray *v.* City of Charleston, 96 U. S. 432; Hartman *v.* Greenhow, 102 U. S. 672.) In the absence of provisions in the franchise contract itself, reserving the right of the State or municipality to alter, amend or repeal the contract, neither the State nor the municipality can, without the consent of the grantee in the franchise contract, either by State or municipal legislation, or by State constitutional amendment, change the terms of the franchise contract so as to avoid an express stipulation therein on the part of the municipality. (City of Walla Walla *v.* W. W. W. W. Co., 172 U. S. 1; V. W. Works Co. *v.* Vicksburgh, 185 U. S. 65; L. F. El. & W. Co. *v.* City of Little Falls, 102 Fed. Rep. 663; N. O. G. L. Co. *v.* L. L., etc., Co., 115 U. S. 650; N. O. W. W. Co. *v.* Rivers, 115 U. S. 674; L. G. Co. *v.* C. G. L. Co., 115 U. S. 674; S. T. W. W. Co. *v.* N. O. W. W. Co., 120 U. S. 64; Am. W. W. Co. *v.* H. W. Co., 115 Fed. Rep. 171; C. Ry. Co. *v.* C. S. Ry. Co., 166 U. S. 557; B. C. R. R. Co. *v.* B. C. R. R. Co., 32 Barb. 358.) The taxation of the franchise contracts of public service corporations where the right to impose such tax is not expressly or impliedly reserved in the franchise contracts would be an impairment of the obligation of the contracts, and would, therefore, be unauthorized and void. (Mayor, etc., *v.* S. A. R. R. Co., 32 N. Y. 261; 34 Barb. 41; Mayor, etc., *v.* T. A. R. R. Co., 33 N. Y. 42; Stein *v.* Mayor, etc., 49 Ala. 362; Los Angeles *v.* L. A. W. Co., 61 Cal. 65; Los Angeles *v.* L. A. W. Co., 177 U. S. 588; S. T. Co. *v.* City of Medford, 115 Fed. Rep. 202; Gordon *v.* Appeal Tax Court, 3 How. [U. S.] 133.) The failure of the special franchise tax law to indicate any principle or method for ascertaining the value of the intangible property included in the special franchise, the failure of the State board to attempt any separate valuation of the intangible property and its failure to adopt or proceed upon any principle or method of valuing the totality of intangible and tangible property together constituting the special franchise, and necessarily the substitution
926 therefor of speculation and guesswork in place of judgment in making such valuation amounted to such an absence of quasi-judicial action as to constitute the taking of property without due process of law; and if the statute contemplates such a procedure, the statute itself is unconstitutional for the same reason. (People *ex rel. v.* Barker, 48 App. Div. 248; 152 N. Y. 417; People *ex rel. v.* Clapp, 152 N. Y. 490; People *ex rel. v.* Adams, 125 N. Y. 471; People *ex rel. v.* Coleman, 126 N. Y. 433; Marsh *v.* B'd of Sup'rs of Clark Co. 42 Wis. 502; Goff *v.* B'd of Sup'rs, 43 Wis. 55; People *v.* Weaver, 100 U. S. 539; Woodbridge *v.* Detroit, 8 Mich. 274; People *v.* S. F. S. Union, 31 Cal. 132.) The State board failed to give the respondent corporations such a hearing as due process of law requires. (Hager *v.* Reclamation Dist., 111 U. S. 701.)

William N. Dykman for Coney Island and Brooklyn Railroad

Company, respondent. The special franchise on Ocean avenue and Fort Hamilton avenue, formerly owned by Prospect Park and Flatbush Railroad Company, should be separately assessed from the special franchise extending from Prospect park to Fulton ferry. (People *v.* O'Brien, 111 N. Y. 1.) The commissioners have adopted an erroneous method of assessment. (People *ex rel. v.* Barker, 152 N. Y. 417.)

John C. Tomlinson and *Edgar J. Kohler* for The New Amsterdam Gas Company, respondent. Things or rights may be property in a legal sense and may have value, and yet that value not be ascertainable in dollars and cents, or capable of admeasurement for the purpose of ad valorem taxation. (Perry *v.* City of Big Rapids, 67 Mich. 146; Dart *v.* Woodhouse, 40 Mich. 399; Tax Com'rs *v.* Holiday, 150 Ind. 216; People *ex rel. v.* Clapp, 152 N. Y. 490; People *ex rel. v.* Neff, 19 App. Div. 585; H. B. Co. *v.* Kentucky, 166 U. S. 150.) A special franchise considered as a distinct piece of property, is in no proper or legal sense capable of valuation, and an assessment
927 thereof cannot be sustained upon the ground that a special franchise, while not susceptible of an accurate admeasurement of value, nevertheless admits of a sufficiently close approach to a correct valuation to suffice for purposes of taxation. (Taylor *v.* L. & N. R. R. Co., 86 Fed. Rep. 350.)

VANN, *J.*:

These appeals were argued together and the questions of law presented are common to all the proceedings. The only questions peculiar to any case were questions of fact, which have been finally disposed of by the concurrent action of the courts below, as they united in adopting the facts as found by the referee. The main discussion at our bar, as well as in the four opinions written in the appellate division, related to the question whether the statute under which the assessments were made violates that part of the constitution which provides for home rule in certain political divisions of the State. In order to answer this question it will be useful to inquire: (1) What does the constitution prohibit; (2) what does the statute command, and (3) what have the courts held as to the validity of other statutes relating to similar subjects?

The principle of home rule, or the right of self-government as to local affairs, existed before we had a constitution. Even prior to magna charta some cities, boroughs and towns had various customs and liberties which had been granted by the Crown or had subsisted through long user, and among them was the right to elect certain local officers from their own citizens and, with some restrictions, to manage their own purely local affairs. These customs and liberties, with other rights, had been so often trampled upon by the king as to arouse deep hatred of centralization of power, and we find among the many grants of the great charter that "the city of London shall have all its ancient liberties and its free customs as well by land as by water. Further, we will and grant that all other cities and burghs and towns * * * shall have all their liberties and free

customs." (Cap. 13.) "All evil customs * * * shall immediately be enquired into by twelve knights of the same county,
928 upon oath, who shall be elected by good men of the same county," and after inquisition made "they shall be altogether destroyed by them, never to be restored, provided this be notified to us before it is done." (Cap. 48.) After this marvelous statute, rights, which before had rested largely on custom, rested on law, with a guaranty against violation by the amazing covenant of King John that if he refused redress for an "excess committed" his subjects should be released from their allegiance and at liberty to make war upon him, "saving harmless our person and the persons of our queen and children and when it hath been redressed they shall obey us as they have done before." (Cap. 61.)

The rights thus secured after a long struggle and by great pressure, although at times denied and violated by the ruling monarch, were never lost, but were brought over by the colonists the same as they brought the right to breathe, and they would have parted with the one as soon as the other. The liberties and customs of localities reappear on a novel and wider basis in the town meetings of New England and the various colonies, including the colony of New York. The right of the inhabitants of townships and manors to meet at stated times in public town meetings, elect town officers and transact town business, was well established while we were a colony and was recognized by different statutes enacted by the governor, council and general assembly. (Van Schaack, chaps. 1201, 1224, 1419, 1448, 1454, 1459, 1460, 1499, 1536 and 1562; Livingston & Smith, chaps. 43 and 654.)

The business transacted at the town meeting related to highways, care of the poor, and matters of purely local concern. It was confined to the affairs of a small district and was clearly separated from public matters of interest to the colony at large. The officers elected, generally by *viva voce* vote, were supervisors, assessors, collectors, constables, commissioners of highways and overseers of the poor. The powers and duties of these officers were regulated by statute, but the right to select them resided in the people of the locality and was stubbornly insisted upon as inviolable.

929 Such was the state of affairs when the first constitution was adopted. While that instrument organized the State, it granted no rights to the people, but was their own creation, expressing the restraints that they desired to place upon themselves by preserving certain principles and methods of government which they wished to remain unalterable. Thus the constitution of 1777 recognized local self-government as already existing, and continued and protected it, so that it could not lawfully be departed from without changing the constitution itself. It provided that "town clerks, supervisors, assessors, constables and collectors and all other officers heretofore eligible by the people, shall always continue to be so eligible." (§ 29.) Sheriffs, coroners, loan officers, county treasurers, clerks of supervisors and justices of the peace were to be appointed. (§§ 26, 29.) Thus our earliest constitution did not

create the right to elect the administrative officers of towns, but continued it as it had existed during the history of the colony while it was under the dominion of the English Crown. The only local officers mentioned by name as "eligible by the people" were town officers, and in fact almost all officers of other local divisions were appointed by central authority.

The second constitution, framed in 1821, continued the right by the general clause, applicable to county, town, city and village officers, that "all officers heretofore elected by the people shall continue to be elected; and all other officers, whose appointment is not provided for by this constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as may by law be directed." (Art. 4, § 15.) Sheriffs, coroners and some other county officers were for the first time made elective.

The third constitution, drafted in 1846, continued the principle and expanded the right by the following provision: "All county officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county officers, as the legislature shall direct. All city, town and
930 village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct." (Art. 10, § 2.) The same provision was carried forward, *ipsissimis verbis*, into our present constitution. (Art. 10, § 2.)

These and other commands of the different constitutions, when read in the light of prior and contemporaneous history, show that the object of the people in enacting them was to prevent centralization of power in the State and to continue, preserve and expand local self-government.

This was effected through a judicious distribution of the power of selecting public officers, by assigning the choice of local officers to the people of the local divisions, and to the people generally, those belonging to the State at large. The management of the local political business of localities, whether as large as a county or as small as a village, is intrusted to local officers selected by the communities where those officers act and through which their jurisdiction extends. The principle of home rule is preserved by continuing the right of these divisions to select their local officers, with the general functions which have always belonged to the office. Unless the office, by whatever name it is known, is protected, as the courts have uniformly held, the right to choose the officer would be lost, for with his former functions gone he would not be the officer contemplated by the constitution, even if the name were retained. Un-

less the office or officer is mentioned *eo nomine* in the constitution, the name may be changed, or the office abolished, provided the functions, if retained at all, remain in some officer chosen by the locality. Local functions, however, cannot be transferred to a State officer. The legislature has the power to regulate, increase or diminish the duties of the local officer, but it has been steadfastly held that this power is subject to the limitation that no essential or exclusive function belonging to the office can be transferred to an officer appointed by central authority. The office may go, but the function must be exercised locally if exercised at all. While no arbitrary line is drawn to separate the powers of local and State officers, the integrity of the local office is protected, with its original and inherent functions unimpaired. It is interference, whether direct or indirect, with the vital, intrinsic and inseparable functions of the office as thus defined and understood that the constitution prohibits. (People *ex rel.* Wood *v.* Draper, 15 N. Y. 532; People *v.* Raymond, 37 N. Y. 428; People *ex rel.* Bolton *v.* Albertson, 55 N. Y. 50; Astor *v.* Mayor, etc., of N. Y., 62 N. Y. 567; Matter of the Mayor, etc., of N. Y., 99 N. Y. 566; Matter of Gertum, *v.* Bd. Sup'rs, 109 N. Y. 170; Koch *v.* Mayor, etc., of N. Y., 152 N. Y. 72; People *ex rel.* Burby *v.* Howland, 155 N. Y. 270; People *ex rel.* Com'rs *v.* Board of Sup'rs, Oneida Co., 170 N. Y. 105; Matter of Brenner, 170 N. Y. 185; Matter of Allison *v.* Welde, 172 N. Y. 421.)

931

The statute in question authorizes the assessment or valuation, for the purpose of general taxation, of all special franchises by a State board of tax commissioners appointed by the governor. (L. 1899, ch. 712.) The general franchise of a corporation is its right to live and do business by the exercise of the corporate powers granted by the State. The general franchise of a street railroad company, for instance, is the special privilege conferred by the State upon a certain number of persons known as the corporators to become a street railroad corporation and to construct and operate a street railroad upon certain conditions. Such a franchise, however, gives the corporation no right to do anything in the public highways without special authority from the State, or some municipal officer or body acting under its authority. When a right of way over a public street is granted to such a corporation, with leave to construct and operate a street railroad thereon, the privilege is known as a special franchise, or the right to do something in the public highway, which, except for the grant, would be a trespass.

932

The statute, which is an amendment of the general tax law, declares, in substance, that the right, authority or permission to construct, maintain or operate some structure, intended for public use, "in, under, above, on or through streets, highways or public places," such as railroads, gas pipes, water mains, poles and wires for electric, telephone and telegraph lines, and the like, is a special franchise. For the purpose of taxation such a franchise is made real estate and is "deemed to include the value of the tangible property of a person,

copartnership or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise and taxed as a part thereof." (§ 2, clause 3.) This includes nothing but what is in the street, directly or indirectly, and excludes power houses, depots and all structures without the lines of the street. The taxes thus imposed are for general purposes, are collected in the same way, and used for the same objects as other taxes upon the general assessment roll.

Prior to the passage of this act general franchises had been taxed for the benefit of the State under a valuation made by a State officer, with the sanction of the courts. (L. 1896, ch. 908, §§ 182, 190; People *ex rel.* W. & H. Co. *v.* Roberts, 154 N. Y. 101.) Special franchises, however, had never been lawfully assessed either by local or State authority, but were made taxable property by the act before us for the first time in the history of the State. (People *ex rel.* Manhattan R. R. Co. *v.* Barker, 146 N. Y. 304; People *ex rel.* Brooklyn City R. R. Co. *v.* Neff, 19 App. Div. 590; affirmed on opinion of Cullen, J., below in 154 N. Y. 763.) The right to assess special franchises by central authority is challenged as a violation of the principle of home rule embodied in the constitution and especially the right to assess the tangible property annexed thereto and included therein by the act, because the latter is withdrawn from the jurisdiction of the local assessors by whom it had been theretofore assessed.

933 Every presumption is in favor of the constitutionality of an act of the legislature and, if the constitution and the act can be reasonably construed so as to enable the latter to stand, it is the duty of the courts to give them that construction; still, it is none the less their duty to adjudge the statute void if it is in plain conflict with the real intent of the fundamental law, when considered in the light of history and in all its aspects. (Sweet *v.* City of Syracuse, 129 N. Y. 316; People *ex rel.* Sinkler *v.* Terry, 108 N. Y. 1.)

What was the situation that confronted the legislature when it passed this statute to raise money for the support of government?

The governor had officially announced that "the farmers, the market gardeners, and the mechanics and tradesmen having small holdings, are paying an improper and excessive portion of the general taxes." The legislature wished to distribute this burden in a just and equitable manner, to take part of the load from those who carried more than their share and to relieve the farms from some of the effects of depreciation in value through competition with the cheap and fertile lands of the West. It found property scattered all over the State worth nearly two hundred millions of dollars, which was not taxed at all and had never been taxed. This property consisted wholly of special franchises, or privileges given by the State, mainly to corporations furnishing to the public transportation, water, light and other necessities or conveniences of daily life. It had grown rapidly in extent and value during recent years. Its value rested upon the right to use in some manner the public highways of the State, but it was intangible, and doubtless for this reason had

never been brought under the taxing power. The legislature also found certain tangible property, which was subject to taxation, situated in the public streets and used only in connection with and as a part of the intangible property not taxed, and of no substantial value except when so used. It found that the valuation of this new kind of property, intangible, invisible and elusive, but of great
934 value, would be attended with peculiar difficulties, which would require a degree of knowledge and skill not possessed by local assessors, but belonging only to experts who had long and carefully studied the subject of taxation in all its varied aspects. The problem was to place a just and adequate value upon a right capable of valuation, but which was unseen, without form or substance, and, as it were, the mere breath of the legislature. It was a new problem that had never arisen before during the history of the State, and it was to be solved, not to meet local needs, but an exigency of State.

How did the legislature deal with this situation?

It created a new system of taxation, brought within its range a new character of property and assigned the duty of making the valuation to the State Board of Tax Commissioners, composed of tax experts already in office, whose sole duty related to the subject of taxation, in all its phases, throughout the entire State. It made the tax commissioners assessors of this new kind of property known as special franchises, clothed them with power to compel the owners to furnish under oath, in addition to a general report containing many details, such information as they called for; authorized them to call upon the local assessors for all facts that they could furnish and to summon aid from all available sources; required them to give notice to the owner affected and an opportunity to be heard, and provided a remedy for review by the courts of every assessment as soon as it was filed. It commanded that all sums, in the nature of a tax, paid by the owner of a special franchise to a municipality for its exclusive use, should be deducted from the tax imposed for local purposes, and exempted the tangible property situated in public highways, and used in connection with the special franchise, from all other forms of taxation. (§§ 2, 42, 43, 44, 45, 46.) The new kind of property was termed real estate, just as it might have been termed personal property, or neutral property, without changing its nature, which was such as local assessors had never dealt with.

The statute should be considered in the light of the circumstances existing when it was passed, which were extraordinary and
935 unprecedented. The system thus created had never been known before, and, as its main subject, the act dealt with special franchises, which had never been taxed before. Property unknown as the subject of taxation to the framers of any of our constitutions was brought into the system, which required new methods of valuation and the exercise of functions which had never belonged to local assessors. The property was *sui generis*, and from its nature could not be valued by local officers. Unless it escaped

taxation in the future as it had in the past, it was necessary to commit the power to other officers with new functions, wider experience and greater opportunities for observation, who would be able to grasp the new scheme of taxation as a whole. We should not be misled by the terms "valuation" or "assessment," as the simple exercise of judgment, for no work can be done without that, but should compare the intrinsic nature of the functions exercised by the local assessors for time out of mind with those intrusted to the State Tax Commissioners, which had never been committed to any board or officer before.

The local assessors dealt with tangible property, which could be seen and was open to the judgment of ordinary men, or with written evidence of debts or contracts the value of which could be easily computed. It was their habit to measure, weigh and count; to learn the market value from current sales; to pass upon physical and material property which they were accustomed to own, rent or use, and with which they were familiar in their daily life. They saw it, knew it and could judge as to its value. It was before their eyes and they could act upon it directly, without resort to complicated computations.

On the other hand, the valuation of special franchises had never been attempted before, but presented a new field of action and called for the exercise of new and different functions. They could not be seen, handled, measured, weighed or counted. They were specialties and had no market value. There were no sales to guide and no experience from ownership, rental or use to rely upon.

936 The new property is real estate in name, but not in reality, for it is a mere privilege to do something in public streets and places not permitted to citizens generally. While local in a narrow sense it is unconfined in its real nature, for it depends largely on the earning capacity of a going concern, frequently with several special franchises, but with no means of determining the amount earned by each. The value depends upon so many conditions, existing, frequently, in localities widely separated and upon such a complication of facts and figures that the valuation cannot be safely intrusted to men of common knowledge and experience. What greater calamity in the shape of taxation could threaten the vast interests involved than to intrust this important subject to unskilled and incompetent men, some of them willing it may be not only to protect their own localities at the expense of others, but to oppress corporations and favor individuals? The burden could not be distributed equally for each local board would have its own method and theory. Uniform action would be impossible and conflict and confusion would result. A wider view, a different kind of judgment, a balancing of localities and figures, an adjustment and equalization of burdens and an exercise of functions not local in nature were required to meet the situation. As we said in a recent case: "It is no disparagement of the capacity and intelligence of the average assessor to say that it would present to him a problem incapable of accurate solution and a rule of action in the perform-

ance of his official duty impossible in practice." (People *ex rel.* D., L. & W. R. R. Co. *v.* Clapp, 152 N. Y. 490, 495.)

The legislature also brought in as an incidental part of the system some tangible property which had been previously assessed by local authority. No tangible property, however, was affected, except such as was situated in the public highways and was so incidental to and dependent upon the special franchises as to have no substantial value unless used in connection with them. The relation between the intangible right to run cars in the streets and the tangible property in the rails to run the cars on, is so intimate as
937 to be inseparable in any practicable system of estimating values. Of what value are poles, strung with wires, standing in the street, without a special franchise to use them to carry electricity or send the mysterious message? What are appliances worth, when made for a special purpose, if they can not be used for that purpose? What are rails and ties worth, when so fastened to the land in a public highway as to be legally a part of it, without a special franchise to place and use them *them* there as part of a railroad? All the mains and pipes, poles and wires, rails and ties of the relators, when separated from their special franchises, have no value except as firewood or old iron. Their only substantial value is the right to use them in connection with the franchise, and, hence, they are incidental to the franchise. As part of the franchise they are worth something, but severed from it nothing to speak of. Suppose a street railroad company should forfeit its special franchise by a violation of the grant, what would its rails and ties be worth? They would cease to exist as rails and ties, and would become simply so much old material and even the title would vest in the owner of the fee. The expense of grading, placing them in position and paving around them, which is a large part of the original cost, would cease to be an investment and would be property no longer. They are worth virtually nothing except for railroad purposes and a railroad can not occupy a street without a special franchise. Separate them from the franchise by taking away the street privilege, and they are destroyed. Their only value as rails and ties, as distinguished from so much old wood and iron, is gone. Taking the broad and practical view of the subject, which the legislature had the right to take in creating the new system, they have no assessable value worthy of notice, except through the actual and constant use made of them as incidental to the special franchises. The value of either resides in the union of both and can be practically ascertained only by treating them as a unit. Unless assessed together, both can not be adequately assessed. A man of judgment, in valuing a wagon
938 and especially in estimating its earning capacity, does not pass upon the body, wheels, top and tongue separately. We regard the tangible property as an inseparable part of the special franchises mentioned in the statute, constituting with them a new entity, which as a going concern can neither be assessed nor sold to advantage, except as one thing, single and entire. (People *v.* O'Brien, 111 N. Y. 1; Gue *v.* Tide Water Canal Co., 24 How. [U. S.] 257;

Hammock *v.* Loan and Trust Co., 105 U. S. 77; Buncombe County Commissioners *v.* Tommey, 115 U. S. 122.)

The function of assessing a special franchise does not in its nature belong to a county, city, town or village, for it has never been exercised by officers of such localities, but to the State, by which it is now exercised for the first time. It is not exclusively local in character and home rule applies only to functions peculiar to localities. It was unknown to our forefathers who brought over primitive home rule, to the colonists who preserved or to the founders of the State who developed it. It is no part of local self-government as known to history, or to learned judges who have written upon home rule in the past. It did not come within the experience of former times and was not contemplated by the framers of our constitutions. They kept purely local affairs under local control, but this is not local in intrinsic character, for the power to be exercised is not confined to the limits of one community. While some special franchises are within a single tax district, others extend through several and sometimes into different towns, cities, and villages. The legislature could not make a law for each case, and in bringing the new system into operation it provided by general rule for all cases of the same general character, whether then existing or expected in the future.

Moreover, a special franchise, now confined to one tax district, may by expansion, through merger, consolidation, leasing and the like, extend into other tax districts. Such an enlargement is open to all, has been the experience of many and may be the experience of all. The same corporation may have many special franchises,
939 continuous or separate, yet they are all practically one, because they all belong to one system, the earning capacity of which may be ascertained, but not that of each special franchise independent of the others. By removing a central franchise, the line is broken and the value of all seriously impaired. The combination of all into a single enterprise gives the highest, if not the only value to each. What would a franchise in a town be worth with no right to enter a city or village? While the strength of the chain is in the links, the value of the links is in the chain. Hence, a franchise is not essentially local in character and may require action, observation and estimate beyond the lines of a single tax district, or the accustomed jurisdiction of local assessors. An examination of the books of the corporation may be necessary in making the valuation, yet they may not be kept in the municipality of the assessors' residence. A highway may be local, but the title thereto is not, for whether a fee or an easement it is held in trust for the people at large, represented by the State, which has control of the streets and of the erections therein. (People *v.* Kerr, 27 N. Y. 188.) The franchise is the right to put something in the highway and use it there, and if the right fails, the title to what was thus placed goes with the general title.

The special franchises of a railroad in operation from a city into suburban towns may be properly treated as an aggregation, without a precise *situs*, as one piece of property producing a gross income,

as a single subject of valuation, like all the personal property of an individual, from one end of the line to the other, although the amount when ascertained must be apportioned and distributed among the several tax districts affected (§ 42). This can make no difference to the company, for it has only so much to pay in any event, and it shows that the work of valuation is not local, but general in its character, and that it is a matter of central rather than municipal concern. It affects the general public rather than the people of a community. The subject is one that local officers cannot handle, because they cannot consider it as a whole by going without their precincts, but must stop at the boundaries
940 of their several districts. They cannot make the distribution among localities interested in the special franchises. Local assessors still remain local assessors, with every accustomed function intact and unimpaired. Local self-government is untouched and there is no invasion of local functions. While special franchises were known when the later constitutions were adopted, they were not then known as taxable property. The office of assessor of special franchises was then unknown. It is not local in nature, but is a new office with new functions adapted to property of a new kind and differing in principle from any ever dealt with by local assessors. Property created by the legislature and never intrusted by it to the local assessors cannot with propriety be said to have been taken away from them.

The entire taxing power belongs to the legislature and not a dollar can be raised for local or general purposes, to carry on self-government in localities or in the State, or to provide for the public safety, order or health except by its authority. This supreme power should be considered in connection with the home rule provision of the constitution and neither should be so construed as to embarrass or cripple the other. Home rule, as understood and practiced in the past, giving to localities the right to govern themselves, but not to hamper the government of the State, should be carefully protected from open attack or indirect invasion. Shadows, however, should give way to substance, and the right to create a new system of taxation and bring in property of a new character, hitherto untaxed, with some other property incidental thereto and worthless without it, cannot, as we think, be denied upon principle and should not be withheld from the legislature unless required by some controlling decision of the court.

While is is difficult to classify all the authorities relating to the subject of home rule, the most of them fall into convenient groups. At the head of the first class stands the celebrated judgment of Chief Judge Denio in People *ex rel.* Wood *v.* Draper (15 N. Y. 532). In that case the statute combined four counties into one police
941 district, invested five police commissioners appointed by the governor, acting as a board with the mayors of two cities in the district, with all the powers previously belonging to certain local officers of said cities respectively. The new board was authorized to appoint and control all the policemen, who were to act in any part

of the district, regardless of residence or county lines. The validity of the act was upheld upon the ground that the commissioners thus appointed were not city officers, although it was strongly challenged at the bar and by a vigorous dissenting opinion, as a violation of the home-rule provision of the constitution.

Similar acts creating a new system by erecting a metropolitan fire district, a metropolitan health district, a metropolitan board of excise and a capital police district, each embracing the territory of two or more municipal divisions of the State, were also sustained, although functions formerly belonging to local officers were transferred to State officials. (People *v.* Pinckney, 32 N. Y. 377; Metropolitan Board of Health *v.* Heister, 37 N. Y. 661; Metropolitan Board of Excise *v.* Barrie, 34 N. Y. 657; People *ex rel.* McMullen *v.* Shepard, 36 N. Y. 285.)

An act, however, which established a police district consisting of a city, with a police force already organized, and "three small patches of sparsely settled territory, in all less than a square mile," was held unconstitutional as an obvious attempt to evade the restrictions relating to home rule, because it was designed for the city only, and the outside fragments could have been brought into the city if it was deemed necessary to extend police protection to them. (People *ex rel.* Bolton *v.* Albertson, 55 N. Y. 50.)

All these cases, except the last, involved the right to erect two or more separate and independent municipalities into a new civil division, to authorize officials appointed by the State to perform the duties formerly discharged by local officers and yet leaving the municipalities in full existence and untouched in all other respects.

Acts authorizing State officials to construct public buildings, parks and highways, the expense of which was to be paid
942 locally, have been uniformly sustained, although the power to make such improvements had been previously vested in the local authorities and it was urged that the transfer of the power was an encroachment upon local self-government. (People *ex rel.* McLean *v.* Flagg, 46 N. Y. 401; Astor *v.* Mayor, etc., of N. Y., 62 N. Y. 567; People *ex rel.* Kilmer *v.* McDonald, 69 N. Y. 362; People *ex rel.* Com'rs *v.* Board of Sup'rs, Oneida Co., 170 N. Y. 105.)

To the next group may be assigned statutes which, directly or indirectly, authorized the appointment of local officers by State officials, or the legislature, or extended the terms of local officers already elected, or limited the power of local authorities in the appointment of local officers. Such legislation has been condemned as in manifest violation of home rule. (Warner *v.* People 2 Den. 272; Devoy *v.* Mayor, etc., of New York, 36 N. Y. 449; People *v.* Raymond, 37 N. Y. 428; People *ex rel.* Fowler *v.* Bull, 46 N. Y. 57; People *ex rel.* Williamson *v.* McKinney, 52 N. Y. 374; People *ex rel.* Lord *v.* Crooks, 53 N. Y. 648; Rathbone *v.* Wirth, 150 N. Y. 459; People *ex rel.* Balcom *v.* Mosher, 163 N. Y. 32; Matter of Brenner, 170 N. Y. 185.) In People *v.* Raymond, which is the chief reliance of the relators, there was an absolute overthrow of the local assessor and the transfer of all his functions to a State officer, which, as the court

held, deprived "the people of the city of a right secured to them by the constitution."

The remaining cases decided in this court are not readily classified, but as the validity of the statutes involved was not disturbed, no analysis thereof is necessary. (People *ex rel.* Einsfeld *v.* Murray, 149 N. Y. 367; Matter of Allison *v.* Welde, 172 N. Y. 421; People *ex rel.* Taylor *v.* Dunlop, 66 N. Y. 162; Matter of the Mayor, etc., of N. Y., 99 N. Y. 569; Matter of McPherson, 104 N. Y. 306; Matter of Gertum *v.* B'd Sup'rs, 109 N. Y. 170; People *ex rel.* Kemmler *v.* Durston, 119 N. Y. 569; Koch *v.* Mayor, etc., of N. Y. 152 N. Y. 72.)

When new systems have been created for the management
943 of the indigent insane, the infliction of the death penalty or the punishment of convicts, formerly confined by sheriffs in county jails, by imprisonment in penitentiaries, no question seems to have been raised or claim made that such legislation interfered with the principle of home rule. The absence of adjudicated cases relating to these and other subjects which might be mentioned is not without significance. It is also significant that the revisers of our present constitution, acting but a few years ago, made no change in the home rule provision, as it indicates that they were satisfied with the subject as it had been expounded by the courts and acted upon by the people.

None of the cases cited had to do with such a peculiar situation and novel conditions as faced the legislature when it passed the act to tax special franchises. Certain expressions of learned judges, used *arguendo*, in discussing the subject of home rule, are relied upon by counsel as establishing a principle that controls this case. Principles are not established by what was said, but by what was decided, and what was said is not evidence of what was decided, unless it relates directly to the question presented for decision. "General expressions," as the great Federal jurist once said, "are to be taken in connection with the cases in which those expressions are used." (Cohens *v.* Virginia, 6 Wheat. 264, 399.)

A more specific review of the authorities is unnecessary, for it is sufficient to state that neither singly nor collectively have they so construed the constitution as to prevent the legislature, under the circumstances existing when it sought to promote a sound public policy by passing the act in question, from creating a new system of taxation, embracing within it a new character of property including incidental additions, and committing the power of assessment to a State board of experts.

The remaining questions raised by the relators do not require elaborate consideration. We cannot sustain their position that the taxation of a special franchise impairs the obligation of a contract and thus violates the Federal Constitution. (Art. 1, § 10).
944 The franchises are grants which usually contain contracts, executed by the municipality, but executory as to the owner. They contain various conditions and stipulations to be observed by the holders of the privilege, such as payment of a license fee, of a gross sum down, of a specific sum each year or a certain percentage

of receipts, as a consideration or "in full satisfaction for the use of the streets." There is no provision that the special franchise, or the property created by the grant, shall be exempt from taxation. Such a stipulation would be void, for no municipality has power to withdraw property from the taxing power of the State, or to provide by ordinance or contract that it shall be free for all time from the common burden which property generally has to bear. Taxation is the rule, with every presumption to support it, while exemption is an exception, with every presumption against it.

The condition upon which a franchise is granted is the purchase price of the grant, the payment of which in money, or by an agreement to bear some burden, brought the property into existence, which thereupon became taxable at the will of the legislature, the same as land granted or leased by the State. There is no implied covenant that property sold by the State cannot be taxed by the State, which can even tax its own bonds, given to borrow money for its own use, unless they contain an express stipulation of exemption. The rule of strict construction applies to State grants, and unless there is an express stipulation not to tax, the right is reserved as an attribute of sovereignty. Special franchises were not taxed until by the act of 1899 amending the tax law they were added to the other taxable property of the State. This is all that the statute does, so far as the question now under consideration is concerned. No part of the grant is changed, no stipulation altered, no payment increased and nothing exacted from the owner of the franchise that is not exacted from the owners of property generally. No blow is struck at the franchise, as such for it remains with every right conferred in full force, but, as it is property, it is required to contribute its ratable share, dependent only upon value, toward the
945 support of government. No burden is placed upon it except such as is borne by the homes of the people and money saved for support in old age.

While all attempts of municipalities to undermine or destroy franchises by changing the terms of the grant have been promptly repressed by the courts, there is no case which holds that a franchise, whether general or special, cannot be taxed the same as other private property. The relators accepted their franchises subject to the right of taxation that applies to all property in the State, and we agree with the learned referee that the special franchise tax takes nothing from the grant, exacts nothing as further compensation for the privilege and impairs no contractual obligation.

The further contention of the relators, that the act is impracticable and incapable of execution; that the special franchises should have been separately assessed; that the State tax commissioners adopted no rule in making the assessments; that the relators did not have a proper hearing at the time provided for review, and that due process of law was not observed in the taxation of their property, after due consideration we overrule, without further expression of reasons than already appears.

In reviewing these cases we have received great aid from the

strong and exhaustive opinion of the late Judge Earl, for many years a distinguished member of this court, who, acting as referee, decided them in the first instance, after full and careful consideration of all the questions involved. It was the last judicial work of that ripe lawyer and eminent jurist, and we regard his decision as one of the most able and profound judgments ever pronounced by him during his long and useful career.

The order of the appellate division should be reversed and judgment of the special term affirmed, in each proceeding, with costs.

Parker, Ch. J., O'Brien, Bartlett, Martin, Cullen and Werner, JJ., concur.

Order reversed, etc.

946 STATE OF NEW YORK, }
County of Albany, } *ss.:*

I, W. H. Shankland, clerk of the court of appeals of State of New York, do hereby certify that I have compared the annexed copy of the opinion made by said court in the case of The People of the State of New York *ex rel.* The Brooklyn City Railroad Company, respondent, against State Board of Tax Commissioners, appellant, with the original thereof on file in this office, and find the same to be a true transcript of and from said original and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal this 29th day of June, 1903.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND,
Clerk of Court of Appeals of State of New York.

947 [Endorsed:] Supreme Court of United States. People of the State of New York *ex rel.* Brooklyn City Railroad Company, plaintiff in error, against State Board of Tax Commissioners, defendant in error. Opinion and certificate of clerk of court of appeals. Sheehan & Collin, attorneys for plaintiff in error, 32 Liberty St. New York.

948 STATE OF NEW YORK:

In Court of Appeals.

At a court of appeals for the State of New York, held at the capitol in the city of Albany, on the twenty-second day of May A. D. 1903.

Present: Hon. Alton B. Parker, chief judge, presiding.

THE PEOPLE, &c., *ex Rel.* THE BROOKLYN CITY R. R. Co., Respondent, *against* GEORGE E. PRIEST and Others, State Board of Tax Commissioners, Appellants. | Order on Motion for Re-argument.

A motion for a re-argument of the above cause having been heretofore made upon the part of the respondent herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered, that the said motion be, and the same hereby is denied, with ten dollars' costs.

A copy.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk.*

949 [Endorsed:] State of New York. n court of appeals The People *ex rel.* The Brooklyn City Railroad Company *vs.* The State Board of Tax Commissioners Order on motion for re-argument.

950 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* BROOKLYN City Railroad Company *vs.* GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. Stearns, Constituting the State Board of Tax Commissioners of the State of New York.

An order in this proceeding in favor of the respondents and against the relator having been made by the special term of this court on the 15th day of July, 1902, and duly entered in the office of the clerk of the county of Albany on said date, upon the report of a referee, reducing the assessment of the special franchise of the relator, as it appears upon the assessment-roll of the city of New York for the year 1900, from the sum of nine millions, four hundred eighty-seven thousand, six hundred twenty-nine dollars to the sum of five millions, ninety-seven thousand, four hundred eighty-three and $\frac{28}{100}$ dollars, and confirming the assessment of said special franchise, as so corrected and reduced, and the relator having appealed from said order to the appellate division of this court for the third department, and the said order having been affirmed upon the facts and reversed upon the law by the appellate division of this court aforesaid, and the order of reversal thereon having been rendered on the 6th day of January, 1903, and the respondents having appealed therefrom to the court of appeals, and the said court of ap-

peals have sent hither its remittitur, filed herein on the first day of May, 1903, by which it appears that the said court of appeals
951 has reversed the order of the appellate division herein, and affirmed that of the special term, with costs, and has given judgment accordingly, and has remitted the judgment of the said court of appeals to this court, to be enforced according to law, and this court having by an order entered herein the 22 day of June, 1903, ordered that said judgment be made the judgment of this court, and the respondents' costs having been adjusted at the sum of two hundred thirty-eight & $\frac{86}{100}$ dollars,

Now, on motion, of John Cunneen, attorney general, attorney for the respondents,

It is adjudged, that the judgment of the said court of appeals be and the same is hereby made the judgment of this court, and

It is further adjudged, that the respondents George E. Priest, J. Edgar Leaycraft and Lester F. Stearns, constituting the State Board of Tax Commissioners of the State of New York, recover of the relator The Brooklyn City Railroad Company, the sum of two hundred thirty-eight and $\frac{86}{100}$ dollars, their costs, as adjusted herein, and that they have execution therefor.

JOHN FRANEY, *Clerk.*

Dated June 22, 1903.

952 [Endorsed:] B. 80, p. 327 Supreme court. People *ex rel.* Brooklyn City Railroad Company *vs.* George E. Priest, *et al.*, constituting the State Board of Tax Commissioners. Original. Judgment. John Cunneen, attorney-general, capitol, Albany, N. Y. Filed Albany county, N. Y. Jun- 22 2.21 p. m. 1903, clerk's office.

953 At a special term of the supreme court of the State of New York, held at the court-house in the city of Albany, N. Y., on the 20 day of June, 1903.

Present: Hon. D. Cady Herrick, justice.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* BROOKLYN City Railroad Company
vs.
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. Stearns, Constituting the State Board of Tax Commissioners of the State of New York.

This cause having been brought on upon the remittitur herein, sent down from the court of appeals, and now filed with this court, by which remittitur it appears that an appeal was taken by the defendants herein, from the order of the appellate division of this court to the said court of appeals, and that upon such appeal the said order of the appellate division of this court was reversed, and the order of the special term herein affirmed by such court, with costs, and that the record of proceedings had been directed by said court of appeals to be remitted to this court, and this court directed to

enforce the said judgment of the court of appeals, according to law,

954 Now, therefore, on motion of John Cunneen, attorney general, attorney for the respondents,

It is ordered and adjudged, that the judgment of the said court of appeals be and the same is hereby made the judgment of this court; and that the respondents George E. Priest, J. Edgar Leaycraft and Lester F. Stearns, as constituting the State Board of Tax Commissioners of the State of New York, have execution against The Brooklyn City Railroad Company, relator, for their costs, when adjusted by the clerk, and inserted in this judgment, and that this order or judgment be annexed to the judgment-roll.

Enter.

D. CADY HERRICK,
Jusce. Sup. Ct.

955 [Endorsed:] Supreme court. People *ex rel.* Brooklyn City Railroad Company, *vs.* George E. Priest, J. Edgar Leaycraft and Lester F. Stearns, constituting the State Board of Tax Commissioners. Original. Order. John Cunneen, attorney-general, capitol, Albany, N. Y. Filed Albany county, N. Y. Jun- 22 2.21 p. m. 1903, clerk's office.

956 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of New York on a remittitur from the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had, before you, or some of you, between The People of the State of New York, *ex rel.* The Brooklyn City Railroad Company, plaintiff-respondent, and The State Board of Tax Commissioners, defendant-appellant, wherein was drawn in question the validity of a statute of and an authority exercised under said State on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened to the great damage of the said People of the State of New York *ex rel.* The Brooklyn City Railroad Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Colum-

bia, within thirty days from the date hereof, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws
957 and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 27 day of June in the year of our Lord one thousand nine hundred and three.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE.
Clerk of the Circuit Court of the United States
for the Northern District of New York,
By C. W. HIGGINSON, *Deputy.*

Allowed by

R. W. PECKHAM,
Associate Justice of the
United States Supreme Court.

958 [Endorsed:] Supreme Court of the United States. People *ex rel.* The Brooklyn City Railroad Company against State Board of Tax Commissioners. Original. Writ of error. Sheehan & Collin, attorneys for plaintiff in error, 32 Nassau street, New York city, N. Y. Filed Albany county, N. Y. Jun- 29 11.32 a. m. 1903, clerk's office.

959 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE BROOKLYN CITY Railroad Company, Plaintiff in Error,
against
STATE BOARD OF TAX COMMISSIONERS, Defendant in Error.

Petition for Writ of Error.

Now comes The Brooklyn City Railroad Company, the above named relator, by Sheehan & Collin, its attorneys, and says that on the 25th day of April, A. D. 1903, the court of appeals of the State of New York made and entered a final order and judgment herein, in favor of The State Board of Tax Commissioners, defendant in error above named, and against The People of the State of New York, *ex rel.* The Brooklyn City Railroad Company, plaintiff in error above named, and afterwards, and on the 22nd day of June, A. D. 1903, the records and proceedings in said cause having been remitted to the supreme court of the State of New York in and for Albany county, said final order and judgment of the court of appeals were made and entered as the final order and judgment of said supreme court, in which final order and judgment and the proceedings had

prior thereunto in this cause certain errors were committed to the prejudice of the said relator, all of which will more in detail appear from the assignment of errors which is filed with this petition.

The said court of appeals of the State of New York is the highest court of the said State of New York in which a decision in this cause could be had.

960 Wherefore, your petitioner prays that a writ of error may issue in this behalf from the Supreme Court of the United States to the supreme court of the State of New York for the correction of the errors and reversal of the judgment so complained of; that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Supreme Court of the United States, that said writ of error operate as a supersedeas, that the amount of security which the petitioner shall give and furnish on said writ of error may be fixed, and that upon the giving of such security, all further proceedings in said court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

Dated, the 26th day of June, 1903.

SHEEHAN & COLLIN,
Attorneys for Petitioner.

The writ of error as prayed for in the foregoing petition is hereby allowed, and the bond for that purpose is fixed at the sum of $1,000.

Dated, the 26 day of June, 1903.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

961 [Endorsed:] Supreme Court of the United States. People *ex rel.* The Brooklyn City Railroad Company against State Board of Tax Commissioners. Original Petition for writ of error. Sheehan & Collin, attorneys for plaintiff in error, 32 Nassau street, New York city, N. Y. Filed Albany county, N. Y. Jun- 29 11.32 a. m. 1903, clerk's office.

962 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE BROOKLYN City Railroad Company, Plaintiff in Error,
against
STATE BOARD OF TAX COMMISSIONERS, Defendant in Error.

Assignment of Errors.

Now comes The Brooklyn City Railroad Company, the above named relator, by Sheehan & Collin, its attorneys, and, in connection with the petition for a writ of error filed herewith, says that in the records and proceedings in this cause and in the final order and judgment made and entered herein on the 22nd day of June, A. D.

1903, by the supreme court of the State of New York, on a remittitur from the court of appeals of the State of New York, there is manifest error in this, to wit:

I.

Error in declining to hold that the act of the legislature of the State of New York, approved May 26th, 1899, (ch. 712, L. 1899), entitled "An act to amend the tax law, in relation to the taxation of public franchises as real property," in so far as it authorizes the assessment imposed by the State Board of Tax Commissioners on March 20, 1900, upon the franchises of The Brooklyn City Railroad Company, relator above named, deprives said relator of its property without due process of law, in contravention of the fourteenth amendment to the Constitution of the United States.

II.

963 Error in declining to hold that said legislative enactment, in so far as it authorizes the said assessment, denies to said relator the equal protection of the laws, in contravention of the fourteenth amendment to the Constitution of the United States.

III.

Error in declining to hold that said legislative enactment, in so far as it authorizes the said assessment, impairs the obligations of contracts, in contravention of section 10, article I of the Constitution of the United States.

Dated the 26th day of June, 1903.

SHEEHAN & COLLIN,
Attorneys for Petitioner.

964 [Endorsed:] Supreme Court of the United States. People *ex rel.* The Brooklyn City Railroad Company against State Board of Tax Commissioners. Original. Assignment of errors. Sheehan & Collin, attorneys for plaintiff in error, 32 Nassau street, New York city, N. Y. Filed Albany county, N. Y. Jun- 29 11.32 a. m. 1903 Clerk's office.

965 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State Board of Tax Commissioners and John Cunneen, attorney general of the State of New York, its attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in the city of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, for the county of Albany,

in an action wherein The People of the State of New York *ex rel.* The Brooklyn City Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable R. W. Peckham, associate justice of the Supreme Court of the United States, this 26 day of June, in the year of our Lord, one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Copy of the above citation received by me at the office of the attorney-general of the State of New York this 29 day of June, A. D. 1903.

JOHN CUNNEEN,
Attorney-General.

966 [Endorsed:] Supreme Court of the United States. People *ex rel.* The Brooklyn City Railroad Company against State Board of Tax Commissioners. Original. Citation. Sheehan & Collin, attorneys for plaintiff in error, 32 Nassau street, New York city, N. Y. Filed Albany county, N. Y. Jun- 29 1.58 p. m. 1903 Clerk's office.

967 Copy.

Bond on Writ of Error.

Know all men by these presents, that we, the Brooklyn City Railroad Company, a corporation, as principal, and the National Surety Company, a corporation, as surety, are held and firmly bound unto the State Board of Tax Commissioners in the full and just sum of one thousand dollars ($1000), to be paid to the said State Board of Tax Commissioners, its successors and assigns, to which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated the 23rd day of June, in the year of our Lord nineteen hundred and three.

Whereas, lately in the supreme court of the State of New York, in a suit pending in said court between said People, of the State of New York *ex rel.* The Brooklyn City Railroad Company plaintiff-respondent, and said State Board of Tax Commissioners, defendant-appellant, a judgment was rendered on a remittitur from the court of appeals of the State of New York against said People of the State of New York *ex rel.* The Brooklyn City Railroad Company, plaintiff-respondent, in favor of said State Board of Tax Commissioners, defendant-appellant, and said plaintiff-respondent having obtained

from a justice of the Supreme Court of the United States a writ of error, and filed a copy thereof in the clerk's office of said court, to reverse said judgment in the aforesaid suit, and a citation directed to said State Board of Tax Commissioners, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, within thirty days from date thereof.

Now, the condition of the above obligation is such that if the said The Brooklyn City Railroad Company, a corporation as aforesaid, shall prosecute said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the above ob-
968 ligation to be void, otherwise to remain in full force and effect.

THE BROOKLYN CITY RAILROAD COMPANY.
By EDW'D MERRITT, *President.*
[L. S.] NATIONAL SURETY COMPANY,
By ROBERT M. NUGENT,
Res. Vice-President.

Attest: RICHARD J. MORIARTY,
Res. Ass't-Secretary.

Sealed and delivered in the presence of:

——— ———.

STATE OF NEW YORK, } ss.:
County of Kings, }

On this 23rd day of June, 1903, before me personally came Edward Merritt to me known, who, being by me duly affirmed, did depose and say that he resided in the borough of Brooklyn, city of New York, that he is the president of the Brooklyn City Railroad Company, the corporation described in and which executed the above instrument, that he knew the seal of said corporation, that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

CHAS. R. GAY,
Notary Public, No. 44, Kings County, N. Y.

Certificate filed in New York county.

969 Copy.

STATE OF NEW YORK, } ss.:
County of New York, }

On this 23rd day of June 1903, before me personally appeared Robert M. Nugent res. vice pres dent of the National Surety Company, with whom I am personally acquainted, who being by me

duly sworn, said that he resides in the county of New York; that he is the res. vice president of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as res. vice president of said company by like authority; and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720 of New York Session Laws of 1893. And the said Robert M. Nugent further said that he is acquainted with Richard J. Moriarty and knows him to be the res. ass't secretary of said company; that the signature of the said Richard J. Moriarty subscribed to the said instrument is in the genuine handwriting of the said Richard J. Moriarty and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said res. vice president.

[L. S.] EDITH BALDWIN,
Notary Public for the County of Kings, No. 122.

Certificate filed in New York, Westchester and Richmond counties.

Copy of By-law.

Be it remembered, that at a regular meeting of the board of directors of the National Surety Company, duly called and held on the 6th day of February, 1900, a quorum being present, the following by-law was adopted:

"ARTICLE XIII, SEC. 1.—*Signatures Required.*—All bonds, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, shall be signed by the president, the vice-president, the second vice-president, a resident vice-president, or an attorney in fact, and, except when signed by an attorney in fact, shall have the seal of the company affixed thereto, duly attested by the secretary, an assistant secretary or a resident assistant secretary. The vice-president, second vice-president, and resident vice-presidents shall each have authority to sign such instruments whether the president be absent or incapacitated or not; and the assistant secretaries and resident assistant secretaries shall each have authority to seal and attest such instruments, whether the secretary be absent or incapacitated or not. All such instruments executed as herein provided shall be as binding upon the company as if the same were signed by the president, duly sealed and attested by the secretary."

STATE OF NEW YORK, } ss.:
County of New York, }

I, Richard J. Moriarty, res. ass't secretary of the National Surety Company, have compared the foregoing copy of by-law with the

original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original by-law.

Given under my hand and seal of the company this 23rd day of June 1903.

[L. S.] RICHARD J. MORIARTY,
Res. Ass't Secretary.

970 [Endorsed:] Supreme Court of the United States. People *ex rel.* The Brooklyn City Railroad Company against State Board of Tax Commissioners. (Copy.) Bond on writ of error. Sheehan & Collin, attorneys for plaintiff in error, 32 Nassau street, New York city, N. Y. Approved June 26, 1903. R. W. Peckham, assoc. jus. Sup. Ct. U. S.

971 STATE OF NEW YORK, }
County of Albany, } *ss:*

I, John Franey, clerk of said county and also clerk of the supreme court of State of New York, held therein, do hereby certify that the annexed record of papers on appeal to the court of appeals of said State, remittitur issued by and from said court of appeals, order of court of appeals denying motion for reargument, the order of the supreme court pursuant to the said remittitur and the judgment in pursuance of said order, are the originals thereof, entered and filed in this office; that attached thereto are the writ of error with allowance thereon, the petition for said writ with allowance thereof and fixing amount of security therefor, made thereon; the citation with acceptance of service thereof; assignment of errors, and the same are the originals thereof; and a copy of the bond on writ of error, which I have compared with the original thereof on file in this office and find the same to be a true copy of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal this 29 day of June 1903.

[Seal Albany County, July, 1847.]

JOHN FRANEY,
Clerk of Albany County and of Supreme Court of State of New York.

Endorsed on cover: File No. 19,000. New York supreme court. Term No. 349. The People of the State of New York *ex rel.* The Brooklyn City Railroad Company, plaintiff in error, *vs.* The State Board of Tax Commissioners. Filed July 7th, 1903.